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असाधारण

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PART II — Section 2

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill were introduced in Lok Sabha on 22nd December, 2011:—

BILL No. 132 OF 2011

A Bill to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the National Food Security Act, 2011.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint, and different dates may be appointed for different provisions of this Act.

2. In this Act, unless the context otherwise requires,—

(1) “*anganwadi*” means a child care and development centre set up under the Integrated Child Development Services Scheme of the Central Government to render services covered under section 4, clause (a) of sub-section (1) of section 5 and section 6;

Short title,
extent and
commence-
ment.

Definitions.

(2) “central pool” means the stock of foodgrains which is,—

(i) procured by the Central Government and the State Governments through minimum support price operations;

(ii) maintained for allocations under the Targeted Public Distribution System, other welfare schemes, including calamity relief and such other schemes;

(iii) kept as reserves for schemes referred to in sub-clause (ii);

(3) “destitute person” means men, women or children who have no resources, means and support required for food and nutrition enabling their survival, to the extent that makes them vulnerable to live with or die of starvation;

(4) “disaster” shall have the same meaning as assigned to it in clause (d) of section 2 of the Disaster Management Act, 2005;

53 of 2005.

(5) “fair price shop” means a shop which has been licensed to distribute essential commodities by an order issued under section 3 of the Essential Commodities Act, 1955, to the ration card holders under the Targeted Public Distribution System;

10 of 1955.

(6) “foodgrains” means rice, wheat or coarse grains or any combination thereof;

(7) “food security” means the supply of the entitled quantity of foodgrains and meal specified under Chapters II, III and IV;

(8) “food security allowance” means the amount of money to be paid by the concerned State Government to the entitled persons under section 13;

(9) “homeless persons” means persons who do not have homes and live as such on the roadside, pavements, or in such other places, or in the open, including persons living in shelters for homeless or beggars or such other homes;

(10) “local authority” includes Panchayat, municipality, district board, cantonment board, town planning authority and in the States of Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura where Panchayats do not exist, the village council or committee or any other body, by whatever name called, which is authorised under the Constitution or any law for the time being in force for self-governance or any other authority or body vested with the control and management of civic services, within a specified local area;

(11) “meal” means hot cooked meal or ready to eat meal or take home ration, as may be prescribed by the Central Government;

(12) “minimum support price” means the assured price announced by the Central Government at which foodgrains are procured from farmers by the Central Government and the State Governments and their agencies, for the central pool;

(13) “National Commission” means the National Food Commission constituted under section 26;

(14) “notification” means a notification issued under this Act and published in the Official Gazette;

(15) “other welfare schemes” means such Government schemes, in addition to the Targeted Public Distribution System, under which foodgrains or meals are supplied as part of the schemes;

(16) “person with disability” means a person defined as such in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995;

1 of 1995.

(17) “priority households” and “general households” mean households identified as such under section 15;

(18) “prescribed” means prescribed by rules made under this Act;

(19) "ration card" means a document issued under an order or authority of the State Government for the purchase of essential commodities from the fair price shops under the Targeted Public Distribution System;

(20) "rural area" means any area in a State except those areas covered by any urban local body or a cantonment board established or constituted under any law for the time being in force;

(21) "Schedule" means a Schedule appended to this Act;

56 of 2007.

(22) "senior citizen" means a person defined as such under clause (h) of section 2 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007;

(23) "social audit" means the process in which people collectively monitor and evaluate the planning and implementation of a programme or scheme;

(24) "starvation" means prolonged involuntary deprivation of food that threatens survival of the person;

(25) "State Commission" means the State Food Commission constituted under section 22;

(26) "State Government", in relation to a Union territory, means the Administrator thereof appointed under article 239 of the Constitution;

(27) "Targeted Public Distribution System" means the system for distribution of essential commodities to the ration card holders through fair price shops;

(28) "Vigilance Committee" means a committee constituted under section 37 to supervise the implementation of all schemes under this Act;

10 of 1955.

(29) the words and expressions not defined here but defined in the Essential Commodities Act, 1955, or any other relevant Act shall have the meaning respectively assigned to them in those Acts.

CHAPTER II

PROVISIONS FOR FOOD SECURITY

3. (1) Every person belonging to priority households and general households, identified under sub-section (2) of section 15, shall be entitled to receive every month from the State Government, under the Targeted Public Distribution System, seven kilograms of foodgrains per person per month for priority households and not less than three kilograms of foodgrains per person per month for general households, at subsidised prices specified in Schedule I.

(2) The entitlements referred to in sub-section (1) at subsidised prices shall extend up to seventy-five per cent. of the rural population and up to fifty per cent. of the urban population:

Provided that not less than forty-six per cent. of the rural and twenty-eight per cent. of the urban population shall be designated as priority households.

(3) On and from the date of commencement of this Act, the entitlements and the coverage referred to in sub-sections (1) and (2), shall be implemented:

Provided that the entitlements of persons belonging to general households shall be linked to such reforms in the Public Distribution System and from such date as may be prescribed by the Central Government.

(4) Subject to sub-section (1), the State Government may provide wheat flour in lieu of the entitled quantity of foodgrains, to the persons belonging to priority households and general households, in accordance with such guidelines as may be notified by the Central Government.

Right to receive foodgrains at subsidised prices by persons belonging to priority households and general households under Targeted Public Distribution System.

Nutritional support to pregnant women and lactating mothers.

4. Every pregnant woman and lactating mother shall be entitled to—

(a) meal, free of charge, during pregnancy and six months after the child birth, through the local *anganwadi*, so as to meet the nutritional standards specified in Schedule II; and

(b) maternity benefit of rupees one thousand per month for a period of six months in accordance with a scheme, including cost sharing, payable in such instalments as may be prescribed by the Central Government:

Provided that all pregnant women and lactating mothers in regular employment with the Central Government or State Governments or Public Sector Undertakings or those who are in receipt of similar benefits under any law for the time being in force shall not be entitled to benefits specified in clauses (a) and (b).

Nutritional support to children.

5. (1) Every child up to the age of fourteen years shall have the following entitlements for his nutritional needs, namely:—

(a) in the case of children in the age group of six months to six years, age appropriate meal, free of charge, through the local *anganwadi* so as to meet the nutritional standards specified in Schedule II:

Provided that for children below the age of six months, exclusive breast feeding shall be promoted;

(b) in the case of children in the age group of six to fourteen years, one mid-day meal, free of charge, everyday, except on school holidays, in all schools run by local bodies, Government and Government aided schools, up to class VIII, so as to meet the nutritional standards specified in Schedule II.

(2) Every school, referred to in clause (b) of sub-section (1), and *anganwadi* shall have facilities for cooking meals, drinking water and sanitation:

Provided that in urban areas facilities of centralised kitchens for cooking meals may be used, wherever required, as per the guidelines issued by the Central Government.

Prevention and management of child malnutrition.

6. The State Government shall, through the local *anganwadi*, identify and provide meals, free of charge, to children who suffer from malnutrition, so as to meet the nutritional standards specified in Schedule II.

Implementation of schemes for realisation of entitlements.

7. The State Governments shall implement schemes covering entitlements under sections 4, 5 and section 6 in accordance with the guidelines, including cost sharing, between the Central Government and the State Governments in such manner as may be prescribed by the Central Government.

CHAPTER III

ENTITLEMENTS OF SPECIAL GROUPS

Entitlements of special groups.

8. The special groups consisting of all destitute persons or homeless persons shall have the following entitlements, namely:—

(a) all destitute persons shall be entitled to at least one meal every day, free of charge, in accordance with such scheme, including cost sharing, as may be prescribed by the Central Government;

(b) all homeless persons shall be entitled to affordable meals at community kitchens, in accordance with such scheme, including cost sharing, as may be prescribed by the Central Government;

(c) the entitlements under clauses (a) and (b) shall be applicable only after it is notified by the respective State Governments:

Provided that persons in receipt of similar benefits under any other scheme of Central Government or State Government shall not be entitled to benefits under clauses (a) and (b);

(d) every State Government shall notify the entitlements under clauses (a) and (b) within one year from the date of commencement of this Act;

(e) the migrants and their families shall be able to claim their entitlements under this Act, at the place where they currently reside.

9. The State Government shall, if it is of the opinion that an emergency or disaster situation exists, provide to affected households, two meals, free of charge, for a period up to three months from the date of disaster, in accordance with such scheme, including cost sharing, as may be prescribed by the Central Government.

Emergency and disaster affected persons.

CHAPTER IV

PERSONS LIVING IN STARVATION

10. The State Government shall identify persons, households, groups, or communities, if any, living in starvation or conditions akin to starvation.

Identification of persons living in starvation, if any.

11. All persons, households, groups or communities, identified under section 10, shall be provided the following, namely:—

Immediate relief from starvation.

(a) meals, two times a day, free of charge, in accordance with a scheme, including cost sharing, as may be prescribed by the Central Government, for six months from the date of identification;

(b) any other relief considered necessary by the State Government.

12. Every State Government shall prepare and notify guidelines for prevention, identification and relief to cases of starvation.

Protocol for prevention of starvation.

CHAPTER V

FOOD SECURITY ALLOWANCE

13. In case of non-supply of the entitled quantities of foodgrains or meals to entitled persons under Chapters II, III and IV, such persons shall be entitled to receive such food security allowance from the concerned State Government to be paid to each person, within such time and manner as may be prescribed by the Central Government.

Right to receive food security allowance in certain cases.

CHAPTER VI

IDENTIFICATION OF PRIORITY HOUSEHOLDS AND GENERAL HOUSEHOLDS

14. (1) At the all India level, the percentage coverage of overall rural and urban population under the priority and general households, for the purposes of providing subsidised foodgrains under the Targeted Public Distribution System, shall be to the extent specified in sub-section (2) of section 3.

Coverage of population under Targeted Public Distribution System.

(2) Subject to sub-section (1), the State-wise distribution shall, from time to time, be determined by the Central Government.

15. (1) The Central Government may, from time to time, prescribe the guidelines for identification of priority households, general households and exclusion criteria, for the purposes of their entitlement under this Act, and notify such guidelines in the Official Gazette.

Guidelines for identification of priority households and general households.

(2) Within the State-wise number of persons belonging to the priority households and general households, determined under sub-sections (1) and (2) of section 14, identification of priority households and general households shall be done by the State Governments or

such other agency as may be decided by the Central Government, in accordance with the guidelines referred to in sub-section (1):

Provided that no household falling under the exclusion criteria, to be prescribed by the Central Government, shall be included either in the priority households or general households.

Publication and display of list of priority households and general households.

16. The list of the identified priority households and general households shall be placed by the State Governments in the public domain and displayed prominently.

Review of number of priority households and general households.

17. Within the State-wise number of persons belonging to priority households and general households, determined under sub-sections (1) and (2) of section 14, the list of the eligible priority households and general households shall be updated by the State Governments in such manner as may be prescribed by the Central Government.

CHAPTER VII

REFORMS IN TARGETED PUBLIC DISTRIBUTION SYSTEM

Reforms in Targeted Public Distribution System.

18. (1) The Central and State Governments shall endeavour to progressively undertake necessary reforms in the Targeted Public Distribution System in consonance with the role envisaged for them in this Act.

(2) The reforms shall, *inter alia*, include—

(a) doorstep delivery of foodgrains to the Targeted Public Distribution System outlets;

(b) application of information and communication technology tools including end-to-end computerisation in order to ensure transparent recording of transactions at all levels, and to prevent diversion;

(c) leveraging “aadhaar” for unique identification, with biometric information of entitled beneficiaries for proper targeting of benefits under this Act;

(d) full transparency of records;

(e) preference to public institutions or public bodies such as Panchayats, self help groups, co-operatives, in licensing of fair price shops and management of fair price shops by women or their collectives;

(f) diversification of commodities distributed under the Public Distribution System over a period of time;

(g) support to local public distribution models and grains banks;

(h) introducing schemes, such as, cash transfer, food coupons, or other schemes, to the targeted beneficiaries in lieu of their foodgrain entitlements specified in Chapter II, in such area and manner as may be prescribed by the Central Government.

CHAPTER VIII

WOMEN EMPOWERMENT

Women of eighteen years of age or above to be head of household for purpose of issue of ration cards.

19. (1) The eldest woman who is not less than eighteen years of age, in every priority household and general household, shall be head of the household for the purpose of issue of ration cards.

(2) Where a household at any time does not have a woman or a woman of eighteen years of age or above, but has a female member below the age of eighteen years, then, the eldest male member of the household shall be the head of the household for the purpose of

issue of ration card and the female member, on attaining the age of eighteen years, shall become the head of the household for such ration cards in place of such male member.

CHAPTER IX

GRIEVANCE REDRESSAL MECHANISM

20. The Central Government and the State Governments shall put in place an internal grievance redressal mechanism which may include call centres, help lines, designation of nodal officers, or such other mechanism as may be prescribed by the respective Governments.

Internal
grievance
redressal
mechanism.

21. (1) For expeditious and effective redressal of grievances of the aggrieved persons in matters relating to distribution of entitled foodgrains or meals under Chapters II, III and IV, a District Grievance Redressal Officer, with requisite staff, shall be appointed by the State Government for each District, to enforce these entitlements and investigate and redress grievances.

District
Grievance
Redressal
Officer.

(2) The qualifications for appointment as District Grievance Redressal Officer and its powers shall be such as may be prescribed by the Central Government.

(3) The method and terms and conditions of appointment of the District Grievance Redressal Officer shall be such as may be prescribed by the State Government.

(4) The State Government shall provide for the salary and allowances of the District Grievance Redressal Officer and other staff appointed under sub-section (1), and such other expenditure as may be considered necessary for their proper functioning.

(5) The officer referred to in sub-section (1) shall hear complaints regarding non-distribution of entitled foodgrains or meals, and matters relating thereto, and take necessary action for their redressal in such manner and within such time as may be prescribed by the Central Government.

(6) Any complainant or the officer or authority against whom any order has been passed by officer referred to in sub-section (1), who is not satisfied with the redressal of grievance may file an appeal against such order before the State Commission.

(7) Every appeal under sub-section (6) shall be filed in such manner and within such time as may be prescribed by the Central Government.

22. (1) Every State Government shall constitute a State Food Commission for the purpose of monitoring and review of implementation of this Act.

State Food
Commission.

(2) The State Commission shall consist of —

- (a) a Chairperson;
- (b) five other Members; and
- (c) a Member-Secretary:

Provided that there shall be at least two women, whether Chairperson, Member or Member-Secretary:

Provided further that there shall be one person belonging to the Scheduled Castes and one person belonging to the Scheduled Tribes, whether Chairperson, Member or Member-Secretary.

(3) The Chairperson, other Members and Member-Secretary shall be appointed from amongst persons—

- (a) who are or have been member of the All India Services or any other civil services of the Union or State or holding a civil post under the Union or State having knowledge and experience in matters relating to food security, policy making and administration in the field of agriculture, civil supplies, nutrition, health or any allied field;

(b) of eminence in public life with wide knowledge and experience in agriculture, law, human rights, social service, management, nutrition, health, food policy or public administration; or

(c) who have a proven record of work relating to the improvement of the food and nutrition rights of the poor.

(4) The Chairperson and every other Member shall hold office for a term not exceeding five years from the date on which he enters upon his office and shall be eligible for reappointment:

Provided that no person shall hold office as the Chairperson or other Member after he has attained the age of sixty-five years.

(5) The method of appointment and other terms and conditions subject to which the Chairperson, other Members and Member-Secretary of the State Commission may be appointed, and time, place and procedure of meetings of the State Commission (including the quorum at such meetings) and its powers, shall be such as may be prescribed by the State Government.

(6) The State Commission shall undertake the following functions, namely:—

(a) monitor and evaluate the implementation of the Act, in relation to the State;

(b) either *suo motu* or on receipt of complaint inquire into violations of entitlements provided under Chapters II, III and IV;

(c) issue guidelines to the State Government in consonance with the guidelines of the National Commission in implementation of this Act;

(d) give advice to the State Government, their agencies, autonomous bodies as well as non-governmental organisations involved in delivery of relevant services, for the effective implementation of food and nutrition related schemes, to enable individuals to fully access their entitlements specified in this Act;

(e) hear appeals against orders of the District Grievance Redressal Officer;

(f) hear complaints transferred to it by the National Commission; and

(g) prepare annual reports which shall be laid before the State Legislature by the State Government.

(7) The State Government shall make available to the State Commission, such administrative and technical staff, as it may consider necessary for proper functioning of the State Commission.

(8) The method of appointment of the staff under sub-section (7), their salaries, allowances and conditions of service shall be such, as may be prescribed by the State Government.

(9) The State Government may remove from office the Chairperson or any Member who —

(a) is, or at any time has been, adjudged as an insolvent; or

(b) has become physically or mentally incapable of acting as a member; or

(c) has been convicted of an offence which, in the opinion of the State Government, involves moral turpitude; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or

(e) has so abused his position as to render his continuation in office detrimental to the public interest.

(10) No such Chairperson or Member shall be removed under clause (d) or clause (e) of sub-section (9) unless he has been given a reasonable opportunity of being heard in the matter.

23. The State Government shall provide for salary and allowances of Chairperson, other Members, Member-Secretary, support staff, and other administrative expenses required for proper functioning of the State Commission.

Salary and allowances of Chairperson, Member, Member-Secretary and other staff of State Commission.

24. Notwithstanding anything contained in sub-section (1) of section 22, two or more States may have a joint State Food Commission for the purposes of this Act with the approval of the Central Government.

Joint State Food Commission.

25. The provisions of section 27 shall apply to the State Food Commission and shall have effect subject to the modification that reference to the National Commission shall be construed as reference to the State Commission.

Application of certain provisions of National Food Commission to State Food Commission.

26. (1) The Central Government shall constitute a body known as the National Food Commission to perform the functions assigned to it under this Act.

National Food Commission.

(2) The headquarters of the National Commission shall be located in the National Capital Region.

(3) The National Commission shall consist of—

- (a) a Chairperson;
- (b) five other Members; and
- (c) a Member-Secretary:

Provided that there shall be at least two women, whether Chairperson, Member or Member-Secretary:

Provided further that there shall be one person belonging to the Scheduled Castes and one person belonging to the Scheduled Tribes whether Chairperson, Member or Member-Secretary.

(4) The Chairperson, other Members and Member-Secretary shall be appointed from amongst persons—

(a) who are or have been a member of All India Services or Indian Legal Service or any other civil services of the Union or holding a civil post under the Union having knowledge and experience in matters relating to food security, policy making and administration in the field of agriculture, civil supplies, nutrition, health or any allied field;

(b) of eminence in public life with wide knowledge and experience in agriculture, law, human rights, social service, management, nutrition, health, food policy or public administration; or

(c) who have a proven record of work relating to the improvement of the food and nutrition rights of the poor.

(5) The Chairperson and every other Member shall hold office for a term not exceeding five years from the date on which he enters upon his office and shall be eligible for reappointment:

Provided that no person shall hold office as the Chairperson or other Member after he has attained the age of sixty-five years.

(6) The method of appointment and other terms and conditions subject to which the Chairperson, other Members and Member-Secretary of the National Commission may be appointed, and time, place and procedure of meetings of the National Commission (including the quorum at such meetings) and its powers, shall be such as may be prescribed by the Central Government.

(7) The National Commission shall undertake the following functions, namely:—

(a) monitor and evaluate the implementation of this Act and schemes made thereunder;

(b) either *suo motu* or on receipt of complaint inquire into violations of entitlements provided under Chapters II, III and IV;

(c) advise the Central Government in synergising existing schemes and framing new schemes for the entitlements provided under this Act;

(d) recommend to the Central Government and the State Governments, steps for the effective implementation of food and nutrition related schemes, to enable persons to fully access their entitlements specified in this Act;

(e) issue requisite guidelines for training, capacity building and performance management of all persons charged with the duty of implementation of the schemes;

(f) consider the reports and recommendations of the State Commissions for inclusion in its annual report;

(g) hear appeals against the orders of the State Commission;

(h) prepare annual reports on implementation of this Act, which shall be laid before each House of Parliament by the Central Government.

(8) The Central Government shall make available to the National Commission such other administrative and technical staff, as it may consider necessary for proper functioning of the National Commission.

(9) The method of appointment of the staff under sub-section (8), their salaries, allowances and conditions of service shall be such as may be prescribed by the Central Government.

(10) The Central Government may remove from office the Chairperson or any Member who—

(a) is, or at any time has been, adjudged as an insolvent; or

(b) has become physically or mentally incapable of acting as a member; or

(c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or

(e) has so abused his position as to render his continuation in office detrimental to the public interest.

(11) No such Chairperson or Member shall be removed under clause (d) or clause (e) of sub-section (10) unless he has been given a reasonable opportunity of being heard in the matter.

27. (1) The National Commission shall, while inquiring into any matter referred to in clause (b) of sub-section (7) of section 26, have all the powers of a civil court while trying a suit

5 of 1908.

under the Code of Civil Procedure, 1908, and, in particular, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office; and
- (e) issuing commissions for the examination of witnesses or documents.

2 of 1974.

(2) The National Commission shall have the power to forward any case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973.

28. The Central Government shall provide for the salary and allowances of Chairperson, other Members and Member-Secretary and support staff and other administrative expenses, required for proper functioning of the National Commission.

Salary and allowances of Chairperson, Member, Member-Secretary and other staff of National Commission.

29. No act or proceeding of the State Commission or the National Commission, as the case may be, shall be invalid merely by reason of—

- (a) any vacancy in, or any defect in the constitution of, the State Commission or, as the case may be, the National Commission; or
- (b) any defect in the appointment of a person acting as a member of the State Commission or, as the case may be, the National Commission; or
- (c) any irregularity in the procedure of the State Commission or, as the case may be, the National Commission not affecting the merits of the case.

Vacancies, etc., not to invalidate proceedings of State Commission or National Commission.

CHAPTER X

OBLIGATIONS OF CENTRAL GOVERNMENT FOR FOOD SECURITY

30. (1) The Central Government shall, for ensuring the regular supply of foodgrains to persons belonging to priority households and general households, allocate from the central pool the required quantity of foodgrains to the State Governments under the Targeted Public Distribution System, as per the entitlements under section 3 and at prices specified in Schedule I.

Central Government to allocate required quantity of foodgrains from central pool to State Governments.

(2) The Central Government shall allocate foodgrains in accordance with the number of persons belonging to the priority households and general households identified in each State under section 15.

(3) The allocation of foodgrains under sub-section (2) shall be revised annually, in the prescribed manner, based on the actual or estimated population, as the case may be.

(4) The Central Government shall provide foodgrains in respect of entitlements under sections 4, 5, 6, 8, 9 and section 11, to the State Governments, at prices specified for the persons belonging to priority households in Schedule I.

(5) Without prejudice to sub-section (1), the Central Government shall,—

- (a) procure foodgrains for the central pool through its own agencies and the State Governments and their agencies;

(b) allocate foodgrains to the States;

(c) provide for transportation of foodgrains, as per allocation, to the depots designated by the Central Government in each State; and

(d) create and maintain required modern and scientific storage facilities at various levels.

Provision for funds by Central Government to State Government in certain cases.

31. In case of short supply of foodgrains from the central pool to a State, the Central Government shall provide funds to the extent of short supply to the State Government for meeting obligations under Chapters II, III and IV in such manner as may be prescribed by the Central Government.

CHAPTER XI

OBLIGATIONS OF STATE GOVERNMENT FOR FOOD SECURITY

Implementation and monitoring of schemes for ensuring food security.

32. (1) The State Government shall be responsible for implementation and monitoring of the schemes of various Ministries and Departments of the Central Government in accordance with guidelines issued by the Central Government for each scheme, and their own schemes, for ensuring food security to the targeted beneficiaries in their State.

(2) Under the Targeted Public Distribution System, it shall be the duty of the State Government to—

(a) take delivery of foodgrains from the designated depots of the Central Government in the State, at the prices specified in Schedule I, organise intra-State allocations for delivery of the allocated foodgrains through their authorised agencies at the door-step of each fair price shop; and

(b) ensure actual delivery or supply of the foodgrains to the entitled persons at the prices specified in Schedule I.

(3) For foodgrain requirements in respect of entitlements under sections 4, 5, 6, 8, 9 and section 11, it shall be the responsibility of the State Government to take delivery of foodgrains from the designated depots of the Central Government in the State, at the prices specified in Schedule I for persons belonging to priority households and ensure actual delivery of entitled benefits, as specified in the sections aforesaid.

(4) The State Government shall prepare and notify guidelines for prevention, identification and relief to cases of starvation as referred to in section 12.

(5) In case of non-supply of the entitled quantities of foodgrains or meals to entitled persons under Chapters II, III and IV, the State Government shall be responsible for payment of food security allowance specified in section 13.

(6) For efficient operations of the Targeted Public Distribution System, every State Government shall,—

(a) create and maintain scientific storage facilities at the State, District and Block levels, being sufficient to accommodate foodgrains required under the Targeted Public Distribution System and other food based welfare schemes;

(b) suitably strengthen capacities of their Food and Civil Supplies Corporations and other designated agencies;

(c) establish institutionalised licensing arrangements for fair price shops in accordance with the relevant provisions of the Public Distribution System (Control) Order, 2001 made under the Essential Commodities Act, 1955, as amended from time to time.

CHAPTER XII

OBLIGATIONS OF LOCAL AUTHORITIES

33. (1) The local authorities shall be responsible for the proper implementation of this Act in their respective areas.

(2) Without prejudice to sub-section (1), the State Government may assign, by notification, additional responsibilities for implementation of the Targeted Public Distribution System to the local authority.

34. In implementing different schemes of the Ministries and Departments of the Central Government and the State Governments, prepared to implement provisions of this Act, the local authority shall be responsible for discharging such duties and responsibilities as may be assigned to them, by notification, by the respective State Governments.

Implement-
ation of
Targeted
Public
Distribution
System.

Obligations of
local
authority.

CHAPTER XIII

TRANSPARENCY AND ACCOUNTABILITY

35. All Targeted Public Distribution System related records shall be placed in the public domain and kept open for inspection to the public, in such manner as may be prescribed by the State Government.

Disclosure of
records of
Targeted
Public
Distribution
System.

36. (1) Every local authority, or any other authority or body, as may be authorised by the State Government, shall conduct or cause to be conducted, periodic social audits on the functioning of fair price shops, Targeted Public Distribution System and other welfare schemes, and cause to publicise its findings and take necessary action, in such manner as may be prescribed by the State Government.

Conduct of
social audit.

(2) The Central Government may, if it considers necessary, conduct or cause to be conducted social audit through independent agencies having experience in conduct of such audits.

37. (1) For ensuring transparency and proper functioning of the Targeted Public Distribution System and accountability of the functionaries in such system, every State Government shall set up Vigilance Committees as specified in the Public Distribution System (Control) Order, 2001, made under the Essential Commodities Act, 1955, as amended from time to time, at the State, District, Block and fair price shop levels consisting of such persons, as may be prescribed by the State Government giving due representation to the local authorities, the Scheduled Castes, the Scheduled Tribes, women and destitute persons or persons with disability.

Setting up of
Vigilance
Committees.

(2) The Vigilance Committees shall perform the following functions, namely:—

- (a) regularly supervise the implementation of all schemes under this Act;
- (b) inform the District Grievance Redressal Officer, in writing, of any violation of the provisions of this Act; and
- (c) inform the District Grievance Redressal Officer, in writing, of any malpractice or misappropriation of funds found by it.

CHAPTER XIV

PROVISIONS FOR ADVANCING FOOD SECURITY

38. The Central Government and the State Governments shall, while implementing the provisions of this Act and the schemes for meeting specified entitlements, give special focus to the needs of the vulnerable groups especially in remote areas and other areas which are difficult to access, hilly and tribal areas for ensuring their food security.

Food security
for people
living in
remote, hilly
and tribal
areas.

39. The Central Government, the State Governments and local authorities shall, for the purpose of advancing food and nutritional security, strive to progressively realise the objectives specified in Schedule III.

Steps to
further
advance food
and
nutritional
security.

CHAPTER XV

MISCELLANEOUS

Other welfare schemes.

40. The provisions of this Act shall not preclude the Central Government or the State Governments from continuing or formulating other food based welfare schemes.

Penalties.

41. Any public servant or authority found guilty, by the State Commission or the National Commission at the time of deciding any complaint or appeal, of failing to provide the relief recommended by the District Grievance Redressal Officer, without reasonable cause, or wilfully ignoring such recommendation, shall be liable to penalty not exceeding five thousand rupees:

Provided that the public servant or the public authority, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed.

Power to adjudicate.

42. (1) For the purpose of adjudging penalty under section 41, the State Commission or the National Commission, as the case may be, shall authorise any of its member to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to provide the relief recommended by the District Grievance Redressal Officer, without reasonable cause, or wilfully ignored such recommendation, he may impose such penalty as he thinks fit in accordance with the provisions of section 41.

Power to delegate by Central Government and State Government.

43. (1) The Central Government may, by notification, direct that the powers exercisable by it (except the power to make rules), in such circumstances and subject to such conditions and limitations, be exercisable also by the State Government or an officer subordinate to the Central Government or the State Government as it may specify in the notification.

(2) The State Government may, by notification, direct that the powers exercisable by it (except the power to make rules), in such circumstances and subject to such conditions and limitations, be exercisable also by an officer subordinate to it as it may specify in the notification.

Act to have overriding effect.

44. The provisions of this Act or the schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of such law.

Power to amend Schedules.

45. (1) If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification, amend Schedule I or Schedule II or Schedule III and thereupon Schedule I or Schedule II or Schedule III, as the case may be, shall be deemed to have been amended accordingly.

(2) A copy of every notification issued under sub-section (1), shall be laid before each House of Parliament as soon as may be after it is issued.

Power of Central Government to give directions.

46. The Central Government may, from time to time, give such directions, as it may consider necessary, to the State Governments for the effective implementation of the provisions of this Act and the State Governments shall comply with such directions.

Power of Central Government to make rules.

47. (1) The Central Government may, by notification, and subject to the condition of previous publication, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) reforms in the Public Distribution System and the date from which entitlement

of general population shall be linked to such reforms under sub-section (3) of section 3;

(b) guidelines for providing wheat flour in lieu of entitled quantity of foodgrains under sub-section (4) of section 3;

(c) scheme including cost sharing for providing maternity benefit to pregnant women and lactating mothers under clause (b) of section 4;

(d) schemes covering entitlements under sections 4, 5 and section 6 including cost sharing under section 7;

(e) scheme including cost sharing for destitute and homeless persons under section 8;

(f) scheme including cost sharing for emergency and disaster affected persons under section 9;

(g) scheme including cost sharing for persons living in starvation under clause (a) of section 11;

(h) amount, time and manner of payment of food security allowance to entitled individuals under section 13;

(i) guidelines for identification of priority and general households, including exclusion criteria for the purpose of their entitlement under sub-section (1) of section 15;

(j) manner in which the list of priority households and general households shall be updated under section 17;

(k) internal grievance redressal mechanism under section 20;

(l) qualifications for appointment as District Grievance Redressal Officer and its powers under sub-section (2) of section 21;

(m) manner and time-limit for hearing complaints by the District Grievance Redressal Officer and the filing of appeals under sub-sections (5) and (7) of section 21;

(n) method of appointment and the terms and conditions of appointment of Chairperson, other Members and Member-Secretary of the National Commission, its powers, and procedure of meetings of the Commission, under sub-section (6) of section 26;

(o) method of appointment of staff of the National Commission, their salary, allowances and conditions of service under sub-section (9) of section 26;

(p) manner in which funds shall be provided by the Central Government to the State Governments in case of short supply of foodgrains, under section 31;

(q) schemes or programmes of the Central Government or the State Governments for utilisation of institutional mechanism under section 51;

(r) any other matter which is to be, or may be, prescribed or in respect of which provision is to be made by the Central Government by rules.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power of State Government to make rules.

48. (1) The State Government may, by notification, and subject to the condition of previous publication, and consistent with this Act and the rules made by the Central Government, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) internal grievance redressal mechanism under section 20;

(b) method and terms and conditions of appointment of the District Grievance Redressal Officer under sub-section (3) of section 21;

(c) method of appointment and the terms and conditions of appointment of Chairperson, other Members and Member-Secretary of the State Commission, procedure for meetings of the Commission and its powers, under sub-section (5) of section 22;

(d) method of appointment of staff of the State Commission, their salaries, allowances and conditions of service under sub-section (8) of section 22;

(e) manner in which the Targeted Public Distribution System related records shall be placed in the public domain and kept open for inspection to public under section 35;

(f) manner in which the social audit on the functioning of fair price shops, Targeted Public Distribution System and other welfare schemes shall be conducted under section 36;

(g) details of constitution of Vigilance Committees under sub-section (1) of section 37;

(h) any other matter which is to be, or may be, prescribed or in respect of which provision is to be made by the State Government by rules.

(3) Every rule, notification and guidelines made or issued by the State Government under this Act shall, as soon as may be after it is made or issued, be laid before each House of the State Legislature where there are two Houses, and where there is one House of the State Legislature, before that House.

Transitory provisions for schemes, guidelines, etc.

49. The schemes, guidelines, orders and food standard, existing on the date of commencement of this Act, shall continue to be in force and operate till such schemes, guidelines, orders and food standard are specified under this Act or the rules made thereunder:

Provided that anything done or any action taken under the said schemes, guidelines, orders and food standard shall be deemed to have been done or taken under the corresponding provisions of this Act and shall continue to be in force accordingly unless and until superseded by anything done or by any action taken under this Act.

Power to remove difficulties.

50. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Utilisation of institutional mechanism for other purposes.

51. The services of authorities to be appointed or constituted under sections 21, 22 and section 26 may be utilised in the implementation of other schemes or programmes of the Central Government or the State Governments, as may be prescribed by the Central Government.

52. The Central Government, or as the case may be the State Government, shall not be liable for any claim by persons belonging to the priority households or general households or other groups entitled under this Act for loss, damage, or compensation; whatsoever, arising out of failure of supply of foodgrains or meals when such failure of supply is due, either directly or indirectly, to *force majeure* conditions, such as, war, flood, drought, fire, cyclone, earthquake or any act of God.

Force
majeure.

SCHEDULE I

[See sections 3(1), 30(1), (4) and 32(2), (3)]

SUBSIDISED PRICES UNDER TARGETED PUBLIC DISTRIBUTION SYSTEM

Subsidised Price for Priority Households	Subsidised Price for General Households
1	2
Not exceeding rupees 3 per kg for rice, rupees 2 per kg for wheat and rupee 1 per kg for coarse grains.	Not exceeding 50 per cent. of the minimum support price for wheat and coarse grains, and not exceeding 50 per cent. of derived minimum support price for rice.

SCHEDULE II

[See sections 4(a), 5(1) and 6]

NUTRITIONAL STANDARDS

Nutritional standards: The nutritional standards for children in the age group of 6 months to 3 years, age group of 3 to 6 years and pregnant and lactating women required to be met by providing 'Take Home Rations'¹ or nutritious hot cooked meal or ready to eat meal in accordance with the Integrated Child Development Services Scheme and nutritional standards for children in lower and upper primary classes under the Mid-Day Meal Scheme are as follows:

Serial number	Category	Type of meal ²	Calories (Kcal)	Protein (g)
1	2	3	4	5
1.	Children (6 months to 3 years)	Take Home Ration	500	12-15
2.	Children (3 to 6 years)	Morning Snack and Hot Cooked Meal	500	12-15
3.	Children (6 months to 6 years) who are malnourished	Take Home Ration	800	20-25
4.	Lower primary classes	Hot Cooked Meal	450	12
5.	Upper primary classes	Hot Cooked Meal	700	20
6.	Pregnant and Lactating mothers	Take Home Ration	600	18-20

Note: 1.—Energy Dense Food fortified with micronutrients as per 50 per cent. of Recommended Dietary Allowance.

Note: 2.—Meals shall be prepared in accordance with the prevailing Food Laws.

NB: Nutritional standards are notified to provide balance diet and nutritious foods in terms of the calorie counts, protein value and micronutrients specified.

SCHEDULE III

(See section 39)

PROVISIONS FOR ADVANCING FOOD SECURITY

(1) Revitalisation of Agriculture —

- (a) agrarian reforms through measures for securing interests of small and marginal farmers;
- (b) increase in investments in agriculture, including research and development, extension services, micro and minor irrigation and power to increase productivity and production;
- (c) ensuring remunerative prices, credit, irrigation, power, crop insurance, etc.;
- (d) prohibiting unwarranted diversion of land and water from food production.

(2) Procurement, Storage and Movement related interventions—

- (a) incentivising decentralised procurement including procurement of coarse grains;
- (b) geographical diversification of procurement operations;
- (c) augmentation of adequate decentralised modern and scientific storage;
- (d) giving top priority to movement of foodgrains and providing sufficient number of rakes for this purpose, including expanding the line capacity of railways to facilitate foodgrain movement from surplus to consuming regions.

(3) Others: Access to—

- (a) safe and adequate drinking water and sanitation;
- (b) health care;
- (c) nutritional, health and education support to adolescent girls;
- (d) adequate pensions for senior citizens, persons with disability and single women.

STATEMENT OF OBJECTS AND REASONS

Article 47 of the Constitution, *inter alia*, provides that the State shall regard raising the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. The Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights, to which India is a signatory, also cast responsibilities on all State parties to recognise the right of everyone to adequate food. Eradicating extreme poverty and hunger is one of the goals under the Millennium Development Goals of the United Nations.

2. In pursuance of the constitutional obligations and obligations under the international conventions, providing food security has been focus of the Government's planning and policy. Food security means availability of sufficient foodgrains to meet the domestic demand as well as access, at the individual level, to adequate quantities of food at affordable prices. Attainment of self-sufficiency in foodgrains production at the national level has been one of the major achievements of the country. In order to address the issue of food security at the household level, Government is implementing the Targeted Public Distribution System under which subsidised foodgrains is provided to the Below Poverty Line, including Antyodaya Anna Yojana, and Above Poverty Line households. While the Below Poverty Line households under the Targeted Public Distribution System receive thirty-five kilograms foodgrains per family per month, the allocation to Above Poverty Line households depends upon availability of foodgrains in the Central pool. Allocations for other food based welfare schemes for women and children, natural disasters, etc., are also being made at subsidised rates.

3. Ensuring food security of the people, however, continues to be a challenge. The nutritional status of the population, and especially of women and children, also needs to be improved to enhance the quality of human resource of the country. The proposed legislation marks a paradigm shift in addressing the problem of food security—from the current welfare approach to a right based approach. Besides expanding coverage of the Targeted Public Distribution System, the proposed legislation would confer legal rights on eligible beneficiaries to receive entitled quantities of foodgrains at highly subsidised prices. It will also confer legal rights on women and children and other Special Groups such as destitute, homeless, disaster and emergency affected persons and persons living in starvation, to receive meal free of charge or at affordable price, as the case may be.

4. In view of the preceding paragraphs, it is proposed to enact a new legislation, namely, the National Food Security Bill, 2011, to—

(a) provide for food and nutritional security, in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices, to people to live a life with dignity;

(b) entitle every person belonging to priority households and general households, to receive every month from the State Government, under the Targeted Public Distribution System, seven kilograms of foodgrains per person per month for priority households and not less than three kilograms of foodgrains per person per month for general households, at subsidised prices specified in Schedule I to the proposed legislation and the said entitlements at subsidised prices shall extend up to seventy-five per cent. of the rural population and up to fifty per cent. of the urban population with not less than forty-six per cent. of the rural and twenty-eight per cent. of the urban population be designated as priority households;

(c) entitle every pregnant woman and lactating mother to meal, free of charge, during pregnancy and six months after child birth, through the local anganwadi, so as to meet the nutritional standards specified in Schedule II; and to provide to such women maternity benefit of rupees one thousand per month for a period of six months

in accordance with a scheme, including cost sharing, payable in such instalments as may be prescribed by the Central Government;

(d) entitle every child up to the age of fourteen years—(i) age appropriate meal, free of charge, through the local anganwadi so as to meet the nutritional standards specified in Schedule II in the case of children in the age group of six months to six years; and (ii) one mid day meal, free of charge, everyday, except on school holidays, in all schools run by local bodies, Government and Government aided schools, up to class VIII, so as to meet the nutritional standards specified in Schedule II in the case of children in the age group of six to fourteen years;

(e) require the State Government to identify and provide meals through the local anganwadi, free of charge, to children who suffer from malnutrition, so as to meet the nutritional standards specified in Schedule II; and implement schemes covering entitlements of women and children in accordance with the guidelines, including cost sharing, between the Central Government and the State Governments in such manner as may be prescribed by the Central Government;

(f) entitle in case of destitute persons at least one meal every day, free of charge, in accordance with such scheme, including cost sharing as may be prescribed by the Central Government; and in case of homeless persons of affordable meals at community kitchens, in accordance with such scheme, including cost sharing as may be prescribed by the Central Government;

(g) require the State Government, if it is of the opinion that an emergency or disaster situation exists, to provide the affected households, two meals, free of charge, for a period up to three months from the date of disaster in accordance with such scheme including cost sharing as may be prescribed by the Central Government;

(h) require the State Government to identify persons, households, groups, or communities, if any, living in starvation or conditions akin to starvation and provide to all such persons, meals, two times a day, free of charge, in accordance with a scheme, including cost sharing, as may be prescribed by the Central Government, for six months from the date of such identification; and any other relief considered necessary by the State Government;

(i) entitle the eligible persons under Chapters II, III and IV of the proposed legislation, to receive such food security allowance from the concerned State Government to be paid to each person, in case of non-supply of the entitled quantities of foodgrains or meals, within the time and manner prescribed by the Central Government;

(j) provide subsidised foodgrains under the Targeted Public Distribution System to specified percentage of rural and urban population under the priority and general households, at the all India level and empower the Central Government to determine the State-wise distribution, from time to time;

(k) enable the Central Government to prescribe guidelines for identification of priority, general households and exclusion criteria, for the purposes of their entitlement under the proposed legislation;

(l) make provision for the identification of priority households and general households to be done by the State Governments or such other agency as may be decided by the Central Government, in accordance with the guidelines made by the Central Government;

(m) progressively undertake necessary reforms by the Central and State Governments in the Targeted Public Distribution System in consonance with the role envisaged for them in the proposed legislation;

(n) treat the eldest woman who is not less than eighteen years of age, in every priority household and general household, to be head of the household for the purpose of issue of ration cards;

(o) impose obligation upon the Central Government and the State Governments to put in place an internal grievance redressal mechanism which may include call centres, help lines, designation of nodal officers, or such other mechanism as may be prescribed by the respective Governments; and for expeditious and effective redressal of grievances of the aggrieved persons in matters relating to distribution of entitled foodgrains or meals under Chapters II, III and IV of the proposed legislation, a District Grievance Redressal Officer, with requisite staff, to be appointed by the State Government for each District, to enforce these entitlements and investigate and redress grievances;

(p) make provision for State Food Commission to be constituted by every State Government for the purpose of monitoring and review of implementation of the proposed legislation and the National Food Commission to be constituted by the Central Government to perform the functions assigned to it under the proposed legislation;

(q) impose obligation upon the Central Government to ensure regular supply of foodgrains for persons belonging to priority households and general households and allocate the required quantity of foodgrains to the State Governments under the Targeted Public Distribution System from the central pool as per the entitlements and at prices specified in Schedule I to the proposed legislation;

(r) make provision for implementation and monitoring by the State Government of the schemes of various Ministries and Departments of the Central Government in accordance with guidelines issued by the Central Government for each scheme, and their own schemes, for ensuring food security to the targeted beneficiaries in their State; and make the local authorities responsible, for the proper implementation of the proposed legislation in their respective areas;

(s) conduct or cause to be conducted by every local authority, or any other authority or body, as may be authorised by the State Government, periodic social audits on the functioning of fair price shops, Targeted Public Distribution System and other welfare schemes, and cause to publicise its findings and take necessary action, in such manner as may be prescribed by the State Government;

(t) impose penalty upon any public servant or authority found guilty, by the State Commission or the National Commission at the time of deciding any complaint or appeal, of failing to provide the relief recommended by the District Grievance Redressal Officer, without reasonable cause, or wilfully ignoring such recommendation, not exceeding five thousand rupees after proper consideration and giving an opportunity of being heard.

5. The notes on clauses explain in detail the various provisions contained in the Bill.

6. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 19th December, 2011.

K. V. THOMAS.

Notes on clauses

Clause 1.—This clause provides for short title, extent and commencement.

Clause 2.—This clause provides for definitions of certain expressions used in the proposed legislation which, *inter alia*, include the expressions 'angwanwadi', 'central pool', 'destitute person', 'disaster', 'fair price shop', 'foodgrains', 'food security', 'food security allowance', 'homeless persons', 'local authority', 'meal', 'minimum support price', 'other welfare schemes', 'person with disability', 'priority households', 'general households', 'ration card', 'rural area', 'senior citizen', 'social audit', 'starvation', 'Targeted Public Distribution System', and 'vigilance committee', etc.

Clause 3.—This clause provides for right to receive foodgrains at subsidised prices by persons belonging to priority households and general households under the Targeted Public Distribution System. It provides that every person belonging to priority households and general households, shall be entitled to receive every month from the State Government, under the Targeted Public Distribution System, seven kilograms of foodgrains per person per month for priority households and not less than three kilograms of foodgrains per person per month for general households, at prices specified in Schedule I. It further provides that the entitlements shall extend up to seventy-five per cent., of the rural population, with not less than forty-six per cent., as priority households and up to fifty per cent. of the urban population, with not less than twenty-eight per cent. as priority households. It also provides that the entitlements shall be implemented with effect from the date of commencement of this Act provided that entitlements of persons belonging to general households shall be linked to such reforms in the Public Distribution System from such dates as may be prescribed by the Central Government. It also provides that the State Government may provide wheat flour in lieu of the entitled quantity of foodgrains, in accordance with the guidelines notified by the Central Government.

Clause 4.—This clause provides for nutritional support to pregnant women and lactating mothers. It provides that every pregnant woman and lactating mother shall be entitled to meal free of charge during pregnancy and six months after the child birth and maternity benefit of rupees one thousand per month for a period of six months.

Clause 5.—This clause provides for nutritional support to children. It provides that children below fourteen years of age, shall be entitled to (i) age appropriate meal free of charge for children in the age group of six months to six years (ii) for children in age group of six years to fourteen years, one mid day meal, free of charge, everyday except school holidays in all schools run by local bodies, Government and Government-aided schools. Nutritional norms for meals to be provided have been specified in Schedule II.

Clause 6.—This clause provides for prevention and management of child malnutrition. It lays down that State Government shall identify children suffering from malnutrition and provide them meal, free of charge, to meet nutritional standards specified in Schedule II.

Clause 7.—This clause provides for implementation of schemes for realisation of entitlements. It provides that schemes for meeting entitlements of pregnant women and lactating mothers and children shall be implemented by the State Government in accordance with guidelines, including cost sharing, prescribed by the Central Government.

Clause 8.—This clause provides for entitlements of special groups. It provides that all destitute persons will be entitled to at least one meal every day free of charge and all homeless persons will be entitled to affordable meals, in accordance with schemes, including cost sharing, to be prescribed by the Central Government. It further provides that the migrants and their families shall be able to claim their entitlements from wherever they reside.

Clause 9.—This clause makes provision for emergency and disaster-affected persons. It provides that the State Government shall in an emergency and disaster situation provide two meals to the affected households, free of charge, for a period up to three months, in accordance with such scheme, including cost sharing, as may be prescribed by the Central Government.

Clause 10.—This clause provides for identification of persons living in starvation, if any. It lays down the responsibility on the State Government to identify persons, households, groups or communities, if any, living in starvation or conditions akin to starvation.

Clause 11.— This clause provides for immediate relief from starvation. It provides that all persons, households, groups or communities, identified under clause 10, shall be entitled to—(a) meals, two times a day, free of charge, in accordance with a scheme, including cost sharing, as may be prescribed by the Central Government, for six months from the date of identification; and (b) any other relief considered necessary by the State Government.

Clause 12.—This clause provides for protocol for prevention of starvation. It lays down the responsibility of State Governments to prepare and notify guidelines for prevention, identification and relief to cases of starvation.

Clause 13.—This clause provides for right to receive food security allowance in certain cases. It provides that in case of non-supply of entitled foodgrains or meals, the entitled persons shall be entitled to receive food security allowance from the State Government, within such time and manner as may be prescribed by the Central Government.

Clause 14.—This clause provides for coverage of population under Targeted Public Distribution System. It provides that at the all India level, the percentage coverage of overall rural and urban population under the priority and general households, for the purposes of providing subsidised foodgrains under the Targeted Public Distribution System, shall be to the extent specified in sub-clause (2) of clause 3 and the State-wise distribution shall be determined by the Central Government.

Clause 15.—This clause provides for guidelines for identification of priority households and general households. It provides that the Central Government may prescribe guidelines for identification of priority and general households, and within the State-wise number of persons belonging to priority and general households determined under clause 14, the identification of priority households and general households shall be done by the State Governments or such other agency as may be decided by the Central Government.

Clause 16.—This clause provides for publication and display of list of priority households and general households. It requires the State Governments to place the list of priority and general households in public domain and display it prominently.

Clause 17.—This clause provides for review of number of priority households and general households. It provides that within the State-wise number of persons belonging to priority and general households determined under sub-clauses (1) and (2) of clause 14, the list of the eligible priority and general households shall be updated by the State Government in such manner as may be prescribed by the Central Government.

Clause 18.—This clause provides for reforms in the Targeted Public Distribution System. It provides that the Central Government and the State Government shall endeavour to progressively undertake necessary reforms in the Targeted Public Distribution System in consonance with the role envisaged for them in the proposed legislation.

Clause 19.—This clause provides for women of eighteen years of age or above to be head of household for purpose of issue of ration cards. It provides that for the purpose of issue of ration card, eldest woman in the household who is eighteen years of age or above shall be the head of the household.

It further provides that where a household at any time does not have a woman or a woman of eighteen years of age or above, but has a female member below the age of eighteen years, then, the eldest male member of the household shall be the head of the household for

the purpose of issue of ration card and the female member, on attaining the age of eighteen years, shall become the head of the household for such ration cards in place of such male member.

Clause 20.—This clause provides for internal grievances redressal mechanism. It provides that the Central Government and the State Governments shall put in place an internal grievance redressal mechanism which may include call centres, help lines, designation of nodal officers, or such other mechanism as may be prescribed.

Clause 21.—This clause provides for District Grievance Redressal Officer. It provides that for redressal of grievances in matters relating to delivery of entitlements under Chapters II, III and IV of the proposed legislation, a District Grievance Redressal Officer shall be appointed by the State Government for each District. It further provides that the qualification and powers of the District Grievance Redressal Officer shall be such as may be prescribed by the Central Government and the method and terms and conditions of appointment shall be such as may be prescribed by the State Government.

It further provides that the District Grievance Redressal Officer shall hear complaints regarding non-distribution of entitled foodgrains or meals, and matters relating thereto, and take necessary action for their redressal in such manner and within such time as may be prescribed by the Central Government and any complainant or the officer or authority against whom any order has been passed by such officer, who is not satisfied with the redressal of grievance may file an appeal against such order before the State Commission.

Clause 22.—This clause provides for State Food Commission. It provides that every State Government shall constitute a State Food Commission for the purpose of monitoring and review of implementation of the proposed legislation.

It further provides that the State Commission shall consist of a Chairperson; five other Members; and a Member Secretary out of whom there shall be at least two women, and there shall be one person belonging to the Scheduled Castes and one person belonging to the Scheduled Tribes, whether Chairperson, Member or Member Secretary.

It also provides that the Chairperson, other Members and Member Secretary shall be appointed from amongst persons—(a) who are or have been member of the All India Services or any other civil services of the Union or State or holding a civil post under the Union or State having knowledge and experience in matters relating to food security, policy making and administration in the field of agriculture, civil supplies, nutrition, health or any allied field; (b) of eminence in public life with wide knowledge and experience in agriculture, law, human rights, social service, management, nutrition, health, food policy or public administration; or (c) who have a proven record of work relating to the improvement of the food and nutrition rights of the poor.

It also provides that the term of the Chairperson and every other Member shall be not exceeding five years from the date on which he enters upon his office and shall be eligible for reappointment and no person shall hold office as the Chairperson or other Member after he has attained the age of sixty-five years.

It also provides that the method of appointment and other terms and conditions of the Chairperson, other Members and Member Secretary of the State Commission and time, place and procedure of meetings of the State Commission (including the quorum at such meetings) and its powers, shall be such as may be prescribed by the State Government.

It also specifies the functions to be undertaken by the State Commission which, *inter alia*, include to—monitor and evaluate the implementation of the proposed legislation, in relation to the State; either *suo motu* or on receipt of complaint inquire into violations of entitlements provided under Chapters II, III and IV; issue guidelines to the State Government in consonance with the guidelines of the National Commission in implementation of the proposed legislation; give advice to the State Government, their agencies, autonomous bodies as well as non-governmental organisations involved in delivery of relevant services,

for the effective implementation of food and nutrition related schemes, to enable individuals to fully access their entitlements specified in the proposed legislation; hear appeals against orders of the District Grievance Redressal Officer; hear complaints transferred to it by the National Commission; and prepare annual reports which shall be laid before the State Legislature by the State Government.

It also provides that the State Government shall make available to the State Commission, such administrative and technical staff, as it may consider necessary for proper functioning of the State Commission. The method of appointment of staff, their salaries, allowances and conditions of service shall be such, as may be prescribed by the State Government.

It also makes provision for removal of the Chairperson and other Members of the State Commission and specifies the grounds, on which they may be removed.

Clause 23.—This clause provides for salary and allowances of Chairperson, Members, Member Secretary and other staff of State Commission. It provides that the State Government shall provide for salary and allowances of the Chairperson, other Members, Member Secretary, support staff, and other administrative expenses required for proper functioning of the State Commission.

Clause 24.—This clause provides for joint State Food Commission. It provides that two or more States may have joint State Food Commission with the approval of the Central Government.

Clause 25.—This clause makes provision for application of certain provisions of National Food Commission to State Food Commission. It provides that the provisions of clause 27 (relating to powers relating to inquiries) shall apply to the State Food Commissions.

Clause 26.—This clause provides for the National Food Commission. It provides that Central Government shall constitute the National Food Commission to perform the functions assigned to it under the proposed legislation, with its headquarter in the National Capital Region. It further provides that the National Commission shall consist of a Chairperson; five other Members; and a Member Secretary provided that there shall be at least two women, one person belonging to the Scheduled Castes and one person belonging to the Scheduled Tribes whether Chairperson, Member or Member Secretary.

It also provides that the Chairperson, other Members and Member Secretary shall be appointed from amongst persons—(a) who are or have been a member of All India Services or Indian Legal Service or any other civil services of the Union or holding a civil post under the Union having knowledge and experience in matters relating to food security, policy making and administration in the field of agriculture, civil supplies, nutrition, health or any allied field; (b) of eminence in public life with wide knowledge and experience in agriculture, law, human rights, social service, management, nutrition, health, food policy or public administration; or (c) who have a proven record of work relating to the improvement of the food and nutrition rights of the poor. The term of office of the Chairperson and every other Member shall not exceed five years from the date on which he enters upon his office and shall be eligible for reappointment and no person shall hold office as the Chairperson or other Member after he has attained the age of sixty-five years.

It also provides that the method of appointment and other terms and conditions of the Chairperson, other Members and Member Secretary of the National Commission and time, place and procedure of meetings of the National Commission (including the quorum at such meetings) and its powers, shall be prescribed by the Central Government.

It also specifies the functions to be undertaken by the National Commission which, *inter alia*, include—monitor and evaluate the implementation of this Act and schemes made thereunder; either *suo motu* or on receipt of complaint inquire into violations of entitlements provided under Chapters II, III and IV; advise the Central Government in synergising existing schemes and framing new schemes for the entitlements provided under the proposed legislation; recommend to the Central Government and the State Governments, steps for the

effective implementation of food and nutrition related schemes, to enable persons to fully access their entitlements specified in the proposed legislation; issue requisite guidelines for training, capacity building and performance management of all persons charged with the duty of implementation of the schemes; consider the reports and recommendations of the State Commissions for inclusion in its annual report; hear appeals against the orders of the State Commission; and prepare annual reports on implementation of this Act, which shall be laid before each House of Parliament by the Central Government.

It also provides that the Central Government shall make available to the National Commission such other administrative and technical staff, as it may consider necessary for proper functioning of the National Commission, the method of appointment to which and their salaries, allowances and conditions of service shall be prescribed by the Central Government.

It also makes provision for the removal of the Chairperson and other Members of the National Commission and time and specifies the ground on which they may be removed.

Clause 27.—This clause provides for powers of the National Commission relating to enquiries. It provides that the National Commission shall, while inquiring into any matter, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and, in particular, in respect of the matters of summoning and enforcing the attendance of any person and examining him on oath; discovery and production of any document; receiving evidence on affidavits; requisitioning any public record or copy thereof from any court or office; and issuing commissions for the examination of witnesses or documents.

It further provides that the National Commission shall have the power to forward any case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973.

Clause 28.—This clause provides for salary and allowances of Chairperson, Member, Member Secretary and other staff of National Commission. It provides that the Central Government shall provide for salary and allowances of Chairperson, other Members, Member Secretary, support staff, and other administrative expenses required for proper functioning of the National Commission.

Clause 29.—This clause provides that vacancies in or any defect in the constitution of the State Commission or National Commission or any defect in the appointment of a person acting as a Member of the State Commission or National Commission or any irregularity in the procedure of the State Commission or National Commission shall not invalidate proceedings of the State Commission or National Commission.

Clause 30.—This clause lays down the responsibilities of the Central Government to allocate required quantity of foodgrains from central pool to State Governments. It provides that the Central Government shall, for ensuring the regular supply of foodgrains to persons belonging to priority households and general households, allocate from the central pool the required quantity of foodgrains to the State Governments under the Targeted Public Distribution System, as per the entitlements under clause 3 and at prices specified in Schedule I.

It further provides that the Central Government shall allocate foodgrains in accordance with the number of persons belonging to the priority households and general households identified in each State under clause 15 and the said allocation of foodgrains shall be revised annually, in the prescribed manner, based on the actual or estimated population.

It also provides that, the Central Government shall, procure foodgrains for the central pool through its own agencies and the State Governments and their agencies; allocate foodgrains to the States; provide for transportation of foodgrains, as per allocation, to the depots designated by the Central Government in each State; and create and maintain required modern and scientific storage facilities at various levels.

Clause 31.—This clause makes provisions for funds by Central Government to State Governments in certain cases. It provides that in case of short supply of foodgrains from the Central pool to a State, Central Government shall provide funds to the extent of short supply.

Clause 32.—This clause provides for implementation and monitoring of schemes for ensuring food security. It provides that the State Governments shall be responsible for implementation and monitoring of the schemes of various Ministries and Departments of the Central Government in accordance with the guidelines issued by the Central Government for each scheme, and their own schemes, for ensuring food security to the targeted beneficiaries in their State.

It further provides that under the Targeted Public Distribution System, it shall be the duty of the State Governments to—(a) take delivery of foodgrains from the designated depots of the Central Government in the State, at the prices specified in Schedule I, organise intra-State allocations for delivery of the allocated foodgrains through their authorised agencies at the door-step of each fair price shop; and (b) ensure actual delivery or supply of the foodgrains to the entitled persons at the prices specified in Schedule I.

It also provides that for foodgrain requirements in respect of entitlements under clauses 4, 5, 6, 8, 9 and clause 11, it shall be the responsibility of the State Government to take delivery of foodgrains from the designated depots of the Central Government in the State, at the prices specified in Schedule I for persons belonging to priority households and ensure actual delivery of entitled benefits, as specified in the clauses aforesaid.

It also provides that the State Governments shall prepare and notify guidelines for prevention, identification and relief to cases of starvation as referred to in clause 12 and in case of non-supply of the entitled quantities of foodgrains or meals to entitled persons under Chapters II, III and IV, the State Government shall be responsible for payment of food security allowance specified in clause 13.

It also provides that for efficient operations of the Targeted Public Distribution System, every State Government shall,—(a) create and maintain scientific storage facilities at the State, District and Block levels, being sufficient to accommodate foodgrains required under the Targeted Public Distribution System and other food based welfare schemes; (b) suitably strengthen capacities of their Food and Civil Supplies Corporations and other designated agencies; and (c) establish institutionalised licensing arrangements for fair price shops in accordance with the relevant provisions of the Public Distribution System (Control) Order, 2001 as amended from time to time.

Clause 33.—This clause provides for implementation of Targeted Public Distribution System. It provides that the local authorities shall be responsible for proper implementation of the proposed legislation in their respective areas and the State Governments may assign additional responsibilities to local authorities in implementation of Targeted Public Distribution System.

Clause 34.—This clause provides for obligations of local authority. It provides that in implementing different schemes of the Ministries and Departments of the Central Government and the State Governments, the local authority shall be responsible for discharging such duties and responsibilities as may be assigned to them by notification, by the respective State Governments.

Clause 35.—This clause makes provision for disclosure of records of Targeted Public Distribution System. It provides that all Targeted Public Distribution System related records shall be placed in the public domain and kept open for inspection to the public.

Clause 36.—This clause provides for conduct of social audit. It provides that social audit on the functioning of fair price shops, Targeted Public Distribution System and other welfare schemes, shall be conducted by local authority, or any other authority or body, as may be authorised by the State Governments. It further provides that the Central Government may, if it considers necessary, also conduct or cause to be conducted social audit through independent agencies.

Clause 37.—This clause provides for setting up of Vigilance Committees by the State Government at various levels for ensuring transparency and proper functioning of the Targeted Public Distribution System and accountability of functionaries in such system. It also specifies the functions of Vigilance Committees.

Clause 38.—This clause provides that the Central Government and the State Governments shall, while implementing the provisions of this Bill and the schemes for meeting specified entitlements, give special focus to the needs of the vulnerable groups especially in remote areas and other areas which are difficult to access, hilly and tribal areas for ensuring their food security.

Clause 39.—This clause provides for steps to further advance food and nutritional security. It provides that for the purpose of advancing food and nutritional security, the Central and State Governments shall strive to progressively realise certain objectives mentioned in Schedule III.

Clause 40.—This clause provides for other welfare schemes. It provides that provisions of the proposed legislation shall not preclude Central or State Governments from continuing or formulating other food based schemes.

Clause 41.—This clause relates to penalty. It provides that any public servant or authority found guilty, by the State Commission or the National Commission at the time of deciding any complaint or appeal, of failing to provide the relief recommended by the District Grievance Redressal Officer, without reasonable cause, or wilfully ignoring such recommendation, shall be liable to penalty not exceeding five thousand rupees.

It further provides that the public servant or the public authority, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed.

Clause 42.—This clause provides for power to adjudicate. It provides that for the purpose of adjudging under clause 41, the State Commission or the National Commission, as the case may be, shall authorise any of its member to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

It further provides that while holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to provide the relief recommended by the District Grievance Redressal Officer, without reasonable cause, or wilfully ignoring such recommendation, he may impose such penalty as he thinks fit in accordance with the provisions of clause 41.

Clause 43.—This clause provides for power to delegate by Central Government and State Governments. It empowers the Central Government to delegate its power (except the power to make rules) to the State Governments or an officer subordinate to the Central Government or State Governments. It also empowers the State Governments to delegate its power (except power to make rules) to an officer subordinate to it.

Clause 44.— This clause gives overriding effect to provisions of the proposed legislation or the schemes made thereunder notwithstanding anything inconsistent contained in any other law.

Clause 45.— This clause seeks to empower the Central Government to amend Schedule I or Schedule II or Schedule III if that Government is satisfied that it is necessary or expedient so to do.

Clause 46.—This clause seeks to empower the Central Government to give directions to State Governments for effective implementation of the provisions of the proposed legislation.

Clause 47.—This clause empowers the Central Government to make rules to carry out the provisions of the proposed legislation. It provides that the Central Government may, by notification, and subject to the condition of previous publication, make rules to carry out the provisions of the proposed legislation. It further specifies the matters in respect of which such rules may be made. It also provides that rules made by the Central Government shall be laid before each House of Parliament as soon as they are made.

Clause 48.—This clause empowers State Governments to make rules to carry out the provisions of the proposed legislation. It provides that the State Government may, by notification, and subject to the condition of previous publication, and consistent with this Act and the rules made by the Central Government, make rules to carry out the provisions of the proposed legislation. It further specifies the matters in respect of which such rules may be made. It also provides that rules, notifications and guidelines issued by the State Government shall be laid before the Legislature of the State as soon as they are made.

Clause 49.—This clause provides for transitory provisions for schemes, guidelines, etc. It provides that the schemes, guidelines, orders and food standards existing on the date of commencement of the proposed legislation shall continue to be in force till these are specified under the proposed legislation or rules made thereunder.

Clause 50.—This clause provides for power to remove difficulties. It provides that if any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty. It further provides that no order shall be made under this section after the expiry of two years from the date of commencement of this Act.

Clause 51.—This clause provides for utilisation of institutional mechanism for other purposes. It provides that the services of authorities to be appointed or constituted under clauses 21, 22 and clause 26 may be utilised in the implementation of other schemes or programmes of the Central Government or the State Governments, as may be prescribed by the Central Government.

Clause 52.— This clause provides for *Force Majeure*. It provides that the Central Government, or as the case may be the State Governments, shall not be liable for any claim by persons belonging to the priority households or general households or other groups entitled under this Act for loss, damage, or compensation; whatsoever, arising out of failure of supply of foodgrains or meals when such failure of supply is due, either directly or indirectly, to *Force Majeure* conditions, such as, war, flood, drought, fire, cyclone, earthquake or any act of God.

Schedule I.—This Schedule specifies the subsidised prices at which foodgrains will be provided to priority and general households under Targeted Public Distribution System.

Schedule II.—This Schedule specifies the nutritional standards for meals to be provided under the proposed legislation to children and pregnant women and lactating mothers.

Schedule III.—This Schedule lists the objectives to be progressively realised by the Central Government, State Governments and local authorities for advancing food security.

FINANCIAL MEMORANDUM

Item (iii) of sub-clause 2 of clause 2 provides that, the “central pool” shall consist of foodgrains kept as reserves for the schemes to be implemented for providing food security. At the rate of buffer carrying cost for 2011-12 and current buffer norms, the annual estimated carrying cost of a stock of five million tons of foodgrains will be about Rupees two thousand and sixty one crore, which will be borne by Central Government as recurring expenditure. This requirement may not cause any additional financial obligation as buffer stocks are already being maintained by the GOI for its ongoing Targeted Public Distribution System.

2. Sub-clause (1) of clause 3 provides that every person belonging to priority households and general households, shall be entitled to receive every month from the State Government, under the Targeted Public Distribution System, seven kilograms of foodgrains per person per month for priority households and not less than three kilograms of foodgrains per person per month for general households, at subsidised prices specified in Schedule I. Sub-clause (2) thereof provides that the entitlements at subsidised prices shall extend upto seventy five per cent. of the rural population and upto fifty per cent. of the urban population, provided, not less than forty-six per cent. of the rural and twenty-eight per cent. of the urban population shall be designated as priority households. The difference between the economic cost of the foodgrains and the prices specified in Schedule I, in respect of the proposed coverage and entitlement will be borne by the Central Government as food subsidy. At the above proposed coverage and entitlement, the economic cost for the year 2011-12 and the prices of foodgrains specified in Schedule I, the total annual expenditure on food subsidy under TPDS is estimated at about Rupees seventy nine thousand eight hundred crore. The estimate of food subsidy is however dependent, among other things, upon economic cost, central issue price of foodgrains, number of beneficiaries covered and quantities of foodgrains allocated and lifted, and therefore subject to change with changes in any or all of the variables affecting food subsidy.

3. Sub-clause (a) of clause 4, clauses 5 and 6 provide for nutritional support to pregnant and lactating women and children below the age of fourteen. These benefits are currently being delivered through the Integrated Child Development Services and Mid Day Meal schemes, and these will continue to be implemented as per prescribed norms, including norms for cost sharing between the Central and the State Governments.

4. Sub-clause (b) of clause 4 provides that every pregnant woman and lactating mother shall be entitled to maternity benefit of rupees one thousand per month for a period of six months in accordance with a scheme, including cost sharing, as may be prescribed by the Central Government. Assuming a coverage of about 2.25 crore pregnant and lactating women, the expenditure for Central Government and States together would be around Rupees thirteen thousand five hundred crores. The actual annual expenditure will depend on the number of identified entitled beneficiaries and those actually availing the benefit. The expenditure will be shared between the Central and State Governments in accordance with a scheme to be prescribed by the Central Government.

5. Clauses 8, 9 and clause 11 provide for supply of meals, free of cost or at affordable prices to destitute and homeless persons, emergency and disaster affected persons, and persons living in starvation. Expenditure to be incurred on supply of meals to these groups will be of a recurring nature and will depend upon number of persons identified, and will be shared between the Central and the State Governments, in accordance with schemes to be prescribed by the Central Government.

6. Clause 10 provides that the State Governments shall identify persons, households, groups, or communities, living in starvation or conditions akin to starvation, for which the expenditure shall be borne by State Governments.

7. Clause 13 provides that in case of non-supply of the entitled quantities of foodgrains or meal to entitled persons under Chapters II, III and IV of the proposed legislation, such persons shall be entitled to receive food security allowance from the concerned State Government, which shall be responsible for making payment of such food security allowance within such time and manner as may be prescribed by the Central Government. The State Government shall bear all expenses on food security allowance, which will be of a recurring nature.

8. Clause 15 provides that identification of priority households and general households shall be done by the State Governments or such other agency as may be decided by the Central Government, in accordance with the guidelines for identification prescribed by the Central Government. Cost of survey for identification of households will be borne by the Central Government and the State Governments in accordance with the guidelines referred to above.

9. Clause 16 provides that the list of the identified priority households and general households shall be placed by the State Governments in the public domain and displayed prominently, for which expenditure will be borne by State Government.

10. Sub-clause (1) of clause 18 provides that the Central and the State Governments shall endeavour to progressively undertake reforms in Targeted Public Distribution System.

11. Clause 20 provides that the Central Government and the State Governments shall put in place an internal grievance redressal mechanism which may include call centres, help lines, designation of nodal officers, or such other mechanism as may be prescribed by the respective Governments. Cost of setting up internal grievance redressal mechanism will be borne by respective Governments.

12. Clause 21 provides that for expeditious and effective redressal of grievances of the aggrieved persons in matters relating to distribution of entitled foodgrains or meals under Chapters II, III, and IV of the proposed legislation, a District Grievance Redressal Officer, with requisite staff, shall be appointed by the State Government for each District, to enforce these entitlements and investigate and redress grievances. The expenditure towards salary and allowances of District Grievance Redressal Officer and other staff, and such other expenditure as may be considered necessary for their proper functioning, which will be of recurring nature will be borne by State Governments.

13. Clause 22 provides that every State Government shall constitute a State Food Commission for the purpose of monitoring and review of implementation of the proposed legislation. Clause 23 provides that the State Government shall provide for salary and allowances of Chairperson, other Members, Member Secretary, support staff, and other administrative expenses required for proper functioning of the State Commission. Expenditure on State Food Commission will differ from State to State and will be of recurring nature.

14. Sub-clause (1) of clause 26 provides that the Central Government shall constitute a body known as the National Food Commission to perform the functions assigned to it under the proposed legislation. Clause 28 provides that the Central Government shall provide for the salary and allowances of Chairperson, other Members and Member Secretary and support staff and other administrative expenses, required for proper functioning of the National Commission. The annual expenditure for this would be known after constitution of the Commission and will be of recurring nature.

15. Sub-clause (4) of clause 30 provides that the Central Government shall provide foodgrains in respect of entitlements under clauses 4, 5, 6, 8, 9 and 11, to the State Governments, at prices specified for the persons belonging to priority households in Schedule I. The difference between the economic cost of foodgrains and the prices specified in Scheduled I, in respect of above schemes will be borne by the Central Government as food subsidy and will be of recurring nature. The estimated expenditure is however dependent upon economic cost, central issue price of foodgrains, number of beneficiaries covered and quantities of

foodgrains allocated and lifted, and therefore subject to change with changes in any or all of the variables.

16. Item (d) of sub-clause (5) of clause 30 provides that the Central Government shall create and maintain required modern and scientific storage facilities at various level, the expenditure on which will be of a non-recurring nature and be borne by the Central Government.

17. Clause 31 provides that in case of short supply of foodgrains from the central pool to a State, the Central Government shall provide funds to the extent of short supply to the State Government for meeting obligations under Chapters II, III and IV in such manner as may be prescribed by the Central Government.

18. Sub-clause (2) of clause 32 provides that under the Targeted Public Distribution System, it shall be the duty of the State Government to take delivery of foodgrains from the designated depots of the Central Government in the State, at the prices specified in the Schedule I; organise intra-State allocations for delivery of the allocated foodgrains through their authorised agencies at the door-step of each fair price shop; and ensure actual delivery or supply of the foodgrains to the entitled persons at the prices specified in Schedule I. The cost of storage, transport and handling of foodgrains till it is finally delivered to the beneficiary will be borne by State Governments.

19. Item (a) of sub-clause (6) of clause 32 provides that the State Government shall create and maintain scientific storage facilities at the State, District, and Block levels, being sufficient to accommodate foodgrains required under the Targeted Public Distribution System and other food based welfare schemes. Expenditure on creation and maintenance of storage facilities will be of a non-recurring nature and will be borne by the State Governments.

20. Sub-clause (2) of clause 33 and clause 34 provide that State Governments may, by notification, assign additional responsibilities to local authorities in implementing Targeted Public Distribution System or other schemes of Central or State Government prepared to implement provisions of the proposed legislation. Expenditure on strengthening of local authorities, required if any, will be borne by the State Governments.

21. Sub-clause (1) of clause 36 provides that every local authority, or any other authority or body, as may be authorised by the State Government, shall conduct or cause to be conducted, periodic social audits on the functioning of fair price shops, Targeted Public Distribution System and other welfare schemes, and cause to publicise its findings and take necessary action, in such manner as may be prescribed by the State Government. Expenditure on such social audits will be borne by the State Governments. Sub-clause (2) thereof provides that the Central Government may, if it considers necessary, conduct or cause to be conducted social audit through independent agencies having experience in conduct of such audits, expenditure for which will be borne by the Central Government.

22. Clause 37 provides for setting up of Vigilance Committees at various levels by the State Government for ensuring transparency and proper function of the Targeted Public Distribution System. Expenditure on Vigilance Committees will be borne by State Governments and will be of a recurring nature.

23. Clause 39 provides that the Central Government, the State Governments and local authorities shall, for the purpose of advancing food and nutritional security, strive to progressively realise the objectives specified in Schedule III. Necessary efforts for realising these objectives will be required to be taken by both the Central and the State Governments in their respective areas and they will also be expected to bear the corresponding expenditure.

24. Clause 40 provides that the provisions of the proposed legislation shall not preclude the Central Government or the State Governments from continuing or formulating other food based welfare scheme. Expenditure for such schemes will be borne by respective Governments, in accordance with provisions of schemes.

25. The Central Government will bear the expenditure in relation to implementation of the proposed legislation in so far as the Union territories are concerned.

26. Apart from the estimates given above, the expenditure which will be involved in implementing the proposed legislation will also include expenditure to be met out of budgets of other Ministries or Departments in order to operationalise the provisions of the proposed legislation, besides strengthening of the organisational structure for proper implementation. It is not practicable to make an estimate of such recurring and non-recurring expenditure at this stage.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 47 of the Bill empowers the Central Government to make, by notification in the Official Gazette, and subject to the condition of previous publication, rules for carrying out the provisions of the proposed legislation. Sub-clause (2) specifies the matters in respect of which such rules may be made. These matters, *inter alia*, include: (a) reforms in the Public Distribution System and the date from which entitlement of general population will be linked to such reforms under sub-clause (3) of clause 3; (b) guidelines for providing wheat flour in lieu of entitled quantity of foodgrains under sub-clause (4) of clause 3; (c) scheme including cost sharing for providing maternity benefit to pregnant women and lactating mothers under sub-clause (b) of clause 4; (d) schemes covering entitlements under clause 4, 5 and 6 including cost sharing under clause 7; (e) scheme including cost sharing for destitute and homeless persons under clause 8; (f) scheme including cost sharing for emergency and disaster affected persons under clause 9; (g) scheme including cost sharing for persons living in starvation under sub-clause (a) of clause 11; (h) the amount, time and manner of payment of food security allowance to entitled persons under clause 13; (i) guidelines for identification of priority and general households, including exclusion criteria for the purpose of their entitlement under sub-clause (1) of clause 15; (j) manner in which the list of priority and general households shall be updated under clause 17; (k) internal grievance redressal mechanism under clause 20; (l) qualifications for appointment as District Grievance Redressal Officer and its powers under sub-clause (2) of clause 21; (m) manner and time limit for hearing complaints by the District Grievance Redressal Officer and the filing of appeals under sub-clause (5) and (7) of clause 21; (n) method of appointment and the terms and conditions of appointment of Chairperson, other Members and Member Secretary of the National Commission, its powers, and procedure of meetings of the Commission, under sub-clause (6) of clause 26; (o) method of appointment of staff of the National Commission, their salary, allowances and conditions of service under sub-clause (9) of clause 26; (p) the manner in which funds shall be provided by the Central Government to the State Governments in case of short supply of foodgrains, under clause 31; (q) schemes or programmes of the Central Government or the State Governments for utilisation of institutional mechanism under clause 51; (r) any other matter which is to be, or may be, prescribed or in respect of which provision is to be made by the Central Government by rules.

2. The rules made by the Central Government are required to be laid, as soon as they are made, before each House of Parliament.

3. Clause 48 of the Bill empowers the State Government to make, by notification in the Official Gazette, and subject to the condition of previous publication and consistent with this Act and the rules made by the Central Government, rules for carrying out the provisions of the proposed legislation. Sub-clause (2) specifies the matters in respect of which such rules may be made. These matters, *inter alia*, include: (a) internal grievance redressal mechanism under clause 20; (b) method and terms and conditions of appointment of the District Grievance Redressal Officer under sub-clause (3) of clause 21; (c) method of appointment and the terms and conditions of appointment of Chairperson, other Members and Member Secretary of the State Commission, procedure for meetings of the Commission and its powers, under sub-clause (5) of clause 22; (d) method of appointment of staff of the State Commission, their salaries, allowances and conditions of service under sub-clause (8) of clause 22; (e) manner in which the Targeted Public Distribution System related records shall be placed in the public domain and kept open for inspection to public under clause 35; (f) manner in which the social audit on the functioning of fair price shops, Targeted Public Distribution System and other welfare schemes shall be conducted under clause 36; (g) details of constitution of vigilance committees under sub-clause (1) of clause 37; (h) any other matter which is to be, or may be, prescribed or in respect of which provision is to be made by the State Government by rules.

4. The rules made by the State Government are required to be laid, as soon as may be after it is made, before the State Legislature.

5. The matters in respect of which rules may be made are generally matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative powers is, therefore, of a normal character.

BILL NO. 134 OF 2011

A Bill to provide for the establishment of a body of Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India established a Democratic Republic to ensure justice for all;

AND WHEREAS India has ratified the United Nations Convention Against Corruption;

AND WHEREAS the Government's commitment to clean and responsive governance has to be reflected in effective bodies to contain and punish acts of corruption;

NOW, THEREFORE, it is expedient to enact a law, for more effective implementation of the said Convention and to provide for prompt and fair investigation and prosecution in cases of corruption.

Be it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

PART I

PRELIMINARY

Short title,
extent,
application
and
commencement.

1. (1) This Act may be called the Lokpal and Lokayuktas Act, 2011.

(2) It extends to the whole of India.

(3) It shall apply to public servants in and outside India.

(4) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different States and for different provisions of this Act, and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

PART II

LOKPAL FOR THE UNION

CHAPTER I

DEFINITIONS

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) "bench" means a bench of the Lokpal;

(b) "Chairperson" means the Chairperson of the Lokpal;

(c) "competent authority", in relation to—

(i) the Prime Minister, means the House of the People;

(ii) a member of the Council of Ministers, means the Prime Minister;

(iii) a member of Parliament other than a Minister, means—

(A) in the case of a member of the Council of States, the Chairman of the Council; and

(B) in the case of a member of the House of the People, the Speaker of the House;

(iv) an officer in the Ministry or Department of the Central Government, means the Minister in charge of the Ministry or Department under which the officer is serving;

(v) a chairperson or members of any body or Board or corporation or authority or company or society or autonomous body (by whatever name called) established or constituted under any Act of Parliament or wholly or partly financed by the Central Government or controlled by it, means the Minister in charge of the administrative Ministry of such body or Board or corporation or authority or company or society or autonomous body;

(vi) an officer of any body or Board or corporation or authority or company or society or autonomous body (by whatever name called) established or constituted under any Act of Parliament or wholly or partly financed by the Central Government or controlled by it, means the head of such body or Board or corporation or authority or company or society or autonomous body;

(vii) in any other case not falling under sub-clauses (i) to (vi) above, means such Department or authority as the Central Government may, by notification, specify:

Provided that if any person referred to in sub-clause (v) or sub-clause (vi) is also a Member of Parliament, then, the competent authority shall be—

(A) in case such member is a Member of the Council of States, the Chairman of the Council; and

(B) in case such member is a Member of the House of the People, the Speaker of the House;

(d) "Central Vigilance Commission" means the Central Vigilance Commission constituted under sub-section (1) of section 3 of the Central Vigilance Commission Act, 2003;

45 of 2003.

(e) "complaint" means a complaint, made in such form as may be prescribed, alleging that a public servant has committed an offence punishable under the Prevention of Corruption Act, 1988;

49 of 1988.

(f) "Delhi Special Police Establishment" means the Delhi Special Police Establishment constituted under sub-section (1) of section 2 of the Delhi Special Police Establishment Act, 1946;

25 of 1946.

(g) "investigation" means an investigation as defined under clause (h) of section 2 of the Code of Criminal Procedure, 1973;

2 of 1974.

(h) "Judicial Member" means a Judicial Member of the Lokpal;

(i) "Lokpal" means the body established under section 3;

(j) "Member" means a Member of the Lokpal;

(k) "Minister" means a Union Minister but does not include the Prime Minister;

(l) "notification" means notification published in the Official Gazette and the expression "notify" shall be construed accordingly;

(m) "preliminary inquiry" means an inquiry conducted under this Act;

(n) "prescribed" means prescribed by rules made under this Act;

(o) "public servant" means a person referred to in clauses (a) to (h) of sub-section (1) of section 14;

(p) "regulations" means regulations made under this Act;

(q) "rules" means rules made under this Act;

(r) "Schedule" means a Schedule appended to this Act;

(s) "Special Court" means the court of a Special Judge appointed under sub-section (1) of section 3 of the Prevention of Corruption Act, 1988.

49 of 1988.

49 of 1988.

(2) The words and expressions used herein and not defined in this Act but defined in the Prevention of Corruption Act, 1988, shall have the meanings respectively assigned to them in that Act.

(3) Any reference in this Act to any other Act or provision thereof which is not in force in any area to which this Act applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such area.

CHAPTER II

ESTABLISHMENT OF LOKPAL

Establishment
of Lokpal.

3. (1) On and from the commencement of this Act, there shall be established, for the purpose of this Act, a body to be called the "Lokpal".

(2) The Lokpal shall consist of—

(a) a Chairperson, who is or has been a Chief Justice of India or is or has been a Judge of the Supreme Court or an eminent person who fulfils the eligibility specified in clause (b) of sub-section (3); and

(b) such number of Members, not exceeding eight out of whom fifty per cent. shall be Judicial Members:

Provided that not less than fifty per cent. of the Members of the Lokpal shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women.

(3) A person shall be eligible to be appointed,—

(a) as a Judicial Member if he is or has been a Judge of the Supreme Court or is or has been a Chief Justice of a High Court;

(b) as a Member other than a Judicial Member, if he is a person of impeccable integrity and outstanding ability having special knowledge and expertise of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.

(4) The Chairperson or a Member shall not be—

(i) a member of Parliament or a member of the Legislature of any State or Union territory;

(ii) a person convicted of any offence involving moral turpitude;

(iii) a person of less than forty-five years of age, on the date of assuming office as the Chairperson or Member, as the case may be;

(iv) a member of any Panchayat or Municipality;

(v) a person who has been removed or dismissed from the service of the Union or a State,

and shall not hold any office of trust or profit (other than his office as the Chairperson or a Member) or be connected with any political party or carry on any business or practise any profession and, accordingly, before he enters upon his office, a person appointed as the Chairperson or a Member, as the case may be, shall, if—

(a) he holds any office of trust or profit, resign from such office; or

(b) he is carrying on any business, sever his connection with the conduct and management of such business; or

(c) he is practising any profession, cease to practise such profession.

Appointment
of Chairperson
and Members
on
recommendations
of Selection
Committee.

4. (1) The Chairperson and Members shall be appointed by the President after obtaining the recommendations of a Selection Committee consisting of—

(a) the Prime Minister—chairperson;

(b) the Speaker of the House of the People—member;

(c) the Leader of Opposition in the House of the People—member;

(d) the Chief Justice of India or a Judge of the Supreme Court nominated by him—member;

(e) one eminent jurist nominated by the President—member.

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Selection Committee.

(3) The Selection Committee shall for the purposes of selecting the Chairperson and Members of the Lokpal and for preparing a panel of persons to be considered for appointment as such, constitute a Search Committee consisting of at least seven persons of standing and having special knowledge and expertise in the matters relating to anti-corruption policy, public administration, vigilance, policy making, finance including insurance and banking, law and management or in any other matter which, in the opinion of the Selection Committee, may be useful in making the selection of the Chairperson and Members of the Lokpal:

Provided that not less than fifty per cent. of the members of the Search Committee shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women:

Provided further that the Selection Committee may also consider any person other than the persons recommended by the Search Committee.

(4) The Selection Committee shall regulate its own procedure in a transparent manner for selecting the Chairperson and Members of the Lokpal.

(5) The term of the Search Committee referred to in sub-section (3), the fees and allowances payable to its members and the manner of selection of panel of names shall be such as may be prescribed.

5. The President shall take or cause to be taken all necessary steps for the appointment of a new Chairperson and Members at least three months before the expiry of the term of the Chairperson or Member, as the case may be, in accordance with the procedure laid down in this Act.

Filling of vacancies of Chairperson or Members.

6. The Chairperson and every Member shall, on the recommendations of the Selection Committee, be appointed by the President by warrant under his hand and seal and hold office as such for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier:

Term of office of Chairperson and Members.

Provided that he may—

(a) by writing under his hand addressed to the President, resign his office; or

(b) be removed from his office in the manner provided in section 37.

7. The salary, allowances and other conditions of service of—

(i) the Chairperson shall be the same as those of the Chief Justice of India;

(ii) other Members shall be the same as those of a Judge of the Supreme Court:

Salary, allowances and other conditions of service of Chairperson and Members.

Provided that if the Chairperson or a Member is, at the time of his appointment, in receipt of pension (other than disability pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of service as the Chairperson or, as the case may be, as a Member, be reduced—

(a) by the amount of that pension; and

(b) if he has, before such appointment, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension:

Provided further that the salary, allowances and pension payable to, and other conditions of service of, the Chairperson or a Member shall not be varied to his disadvantage after his appointment.

Restriction on
employment
by
Chairperson
and Members
after ceasing
to hold office.

8. (1) On ceasing to hold office, the Chairperson and every Member shall be ineligible for—

(i) reappointment as the Chairperson or a Member of the Lokpal;

(ii) any diplomatic assignment, appointment as administrator of a Union territory and such other assignment or appointment which is required by law to be made by the President by warrant under his hand and seal;

(iii) further employment to any other office of profit under the Government of India or the Government of a State;

(iv) contesting any election of President or Vice-President or Member of either House of Parliament or Member of either House of a State Legislature or Municipality or Panchayat within a period of five years from the date of relinquishing the post.

(2) Notwithstanding anything contained in sub-section (1), a Member shall be eligible to be appointed as a Chairperson, if his total tenure as Member and Chairperson does not exceed five years.

Explanation.—For the purposes of this section, it is hereby clarified that where the Member is appointed as the Chairperson, his term of office shall not be more than five years in aggregate as the Member and the Chairperson.

Member to act
as Chairperson
or to discharge
his functions
in certain
circumstances.

9. (1) In the event of occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the President may, by notification, authorise the senior-most Member to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, the senior-most Member available, as the President may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Secretary,
other officers
and staff of
Lokpal.

10. (1) There shall be a Secretary to the Lokpal in the rank of Secretary to Government of India, who shall be appointed by the Chairperson from a panel of names sent by the Central Government.

(2) There shall be a Director of Inquiry and a Director of Prosecution not below the rank of Additional Secretary to the Government of India or equivalent, who shall be appointed by the Chairperson from a panel of names sent by the Central Government.

(3) The appointment of officers and other staff of the Lokpal shall be made by the Chairperson or such Member or officer of Lokpal as the Chairperson may direct:

Provided that the President may by rule require that the appointment in respect of any post or posts as may be specified in the rule, shall be made after consultation with the Union Public Service Commission.

(4) Subject to the provisions of any law made by Parliament, the conditions of service of Secretary and other officers and staff of the Lokpal shall be such as may be specified by regulations made by the Lokpal for the purpose:

Provided that the regulations made under this sub-section shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.

CHAPTER III

INQUIRY WING

11. (1) Notwithstanding anything contained in any law for the time being in force, the Lokpal shall constitute an Inquiry Wing headed by the Director of Inquiry for the purpose of conducting preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988:

Inquiry Wing.

49 of 1988.

Provided that till such time the Inquiry Wing is constituted by the Lokpal, the Central Government shall make available such number of officers and other staff from its Ministries or Departments, as may be required by the Lokpal, for conducting preliminary inquiries under this Act.

(2) For the purposes of assisting the Lokpal in conducting a preliminary inquiry under this Act, the officers of the Inquiry Wing not below the rank of the Under Secretary to the Government of India, shall have the same powers as are conferred upon the Inquiry Wing of the Lokpal under section 27.

CHAPTER IV

PROSECUTION WING

12. (1) The Lokpal shall, by notification, constitute a Prosecution Wing headed by the Director of Prosecution for the purpose of prosecution of public servants in relation to any complaint by the Lokpal under this Act:

Prosecution Wing.

Provided that till such time the Prosecution Wing is constituted by the Lokpal, the Central Government shall make available such number of officers and other staff from its Ministries or Departments, as may be required by the Lokpal, for conducting prosecution under this Act.

(2) The Director of Prosecution shall, after having been so directed by the Lokpal, file a case in accordance with the findings of investigation report, before the Special Court and take all necessary steps in respect of the prosecution of public servants in relation to any offence punishable under the Prevention of Corruption Act, 1988.

49 of 1988.

(3) The case under sub-section (2), shall be deemed to be a report, filed on completion of investigation, referred to in section 173 of the Code of Criminal Procedure, 1973.

2 of 1974.

CHAPTER V

EXPENSES OF LOKPAL TO BE CHARGED ON CONSOLIDATED FUND OF INDIA

13. The administrative expenses of the Lokpal, including all salaries, allowances and pensions payable to or in respect of the Chairperson, Members or Secretary or other officers or staff of the Lokpal, shall be charged upon the Consolidated Fund of India and any fees or other moneys taken by the Lokpal shall form part of that Fund.

Expenses of Lokpal to be charged on Consolidated Fund of India.

CHAPTER VI

JURISDICTION IN RESPECT OF INQUIRY

14. (1) Subject to the other provisions of this Act, the Lokpal shall inquire or cause an inquiry to be conducted into any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint in respect of the following, namely:—

(a) any person who is or has been a Prime Minister:

Provided that the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against the Prime Minister,—

(i) in so far as it relates to international relations, external and internal security, public order, atomic energy and space;

Jurisdiction of Lokpal to include Prime Minister, Ministers, Members of Parliament, Groups A, B, C and D officers and officials of Central Government.

(ii) unless a full bench of the Lokpal consisting of its Chairperson and all Members considers the initiation of inquiry and at least three-fourth of its Members approves of such inquiry:

Provided further that any such inquiry shall be held *in camera* and if the Lokpal comes to the conclusion that the complaint deserves to be dismissed, the records of the inquiry shall not be published or made available to anyone;

(b) any person who is or has been a Minister of the Union;

(c) any person who is or has been a Member of either House of Parliament;

(d) any Group 'A' or Group 'B' officer or equivalent or above, from amongst the public servants defined in sub-clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 when serving or who has served, in connection with the affairs of the Union;

49 of 1988.

(e) any Group 'C' or Group 'D' official or equivalent, from amongst the public servants defined in sub-clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 when serving or who has served in connection with the affairs of the Union subject to the provision of sub-section (1) of section 20;

49 of 1988.

(f) any person who is or has been a chairperson or member or officer or employee in any body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by an Act of Parliament or wholly or partly financed by the Central Government or controlled by it:

Provided that in respect of such officers referred to in clause (d) who have served in connection with the affairs of the Union or in any body or Board or corporation or authority or company or society or trust or autonomous body referred to in clause (e) but are working in connection with the affairs of the State or in any body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by an Act of the State Legislature or wholly or partly financed by the State Government or controlled by it, the Lokpal and the officers of its Inquiry Wing or Prosecution Wing shall have jurisdiction under this Act in respect of such officers only after obtaining the consent of the concerned State Government;

(g) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not), by whatever name called, wholly or partly financed or aided by the Government and the annual income of which exceeds such amount as the Central Government may, by notification, specify;

(h) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not) in receipt of any donation from the public and the annual income of which exceeds such amount as the Central Government may, by notification, specify or from any foreign source under the Foreign Contribution (Regulation) Act, 2010 in excess of ten lakh rupees in a year or such higher amount as the Central Government may, by notification, specify.

42 of 2010.

Explanation.—For the purpose of clauses (f) and (g), it is hereby clarified that any entity or institution, by whatever name called, corporate, society, trust, association of persons, partnership, sole proprietorship, limited liability partnership (whether registered under any law for the time being in force or not), shall be the entities covered in those clauses:

Provided that any person referred to in this clause shall be deemed to be a public servant under clause (c) of section 2 of the Prevention of Corruption Act, 1988 and the provisions of that Act shall apply accordingly.

49 of 1988.

(2) Notwithstanding anything contained in sub-section (1), the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against any Member of either House of Parliament in respect of anything said or a vote given by him in Parliament or any committee thereof covered under the provisions contained in clause (2) of article 105 of the Constitution.

49 of 1988. (3) The Lokpal may inquire into any act or conduct of any person other than those referred to in sub-section (1), if such person is involved in the act of abetting, bribe giving or bribe taking or conspiracy relating to any allegation of corruption under the Prevention of Corruption Act, 1988 against a person referred to in sub-section (1):

Provided that no action under this section shall be taken in case of a person serving in connection with the affairs of a State, without the consent of the State Government.

60 of 1952. (4) No matter in respect of which a complaint has been made to the Lokpal under this Act, shall be referred for inquiry under the Commissions of Inquiry Act, 1952.

Explanation.—For the removal of doubts, it is hereby declared that a complaint under this Act shall only relate to a period during which the public servant was holding or serving in that capacity.

49 of 1988. 15. In case any matter or proceeding related to allegation of corruption under the Prevention of Corruption Act, 1988 has been pending before any court or committee of either House of Parliament or before any other authority prior to commencement of this Act or prior to commencement of any inquiry after the commencement of this Act, such matter or proceeding shall be continued before such court, committee or authority.

Matters pending before any court or committee or authority for inquiry not to be affected.

16. (1) Subject to the provisions of this Act,—

Constitution of benches of Lokpal.

(a) the jurisdiction of the Lokpal may be exercised by benches thereof;

(b) a bench may be constituted by the Chairperson with two or more Members as the Chairperson may deem fit;

(c) every bench shall ordinarily consist of at least one Judicial Member;

(d) where a bench consists of the Chairperson, such bench shall be presided over by the Chairperson;

(e) where a bench consists of a Judicial Member, and a non-Judicial Member, not being the Chairperson, such bench shall be presided over by the Judicial Member;

(f) the benches of the Lokpal shall ordinarily sit at New Delhi and at such other places as the Lokpal may, by regulations, specify.

(2) The Lokpal shall notify the areas in relation to which each bench of the Lokpal may exercise jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson shall have the power to constitute or reconstitute benches from time to time.

(4) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such nature that it ought to be heard by a bench consisting of three or more Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such bench as the Chairperson may deem fit.

Distribution of business amongst benches.

17. Where benches are constituted, the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Lokpal amongst the benches and also provide for the matters which may be dealt with by each bench.

Power of Chairperson to transfer cases.

18. On an application for transfer made by the complainant or the public servant, the Chairperson, after giving an opportunity of being heard to the complainant or the public servant, as the case may be, may transfer any case pending before one bench for disposal to any other bench.

Decision to be by majority.

19. If the Members of a bench consisting of an even number of Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Lokpal and such point or points shall be decided according to the opinion of the majority of the Members of the Lokpal who have heard the case, including those who first heard it.

CHAPTER VII

PROCEDURE IN RESPECT OF PRELIMINARY INQUIRY AND INVESTIGATION

Provisions relating to complaints and preliminary inquiry and investigation.

20. (1) The Lokpal shall, on receipt of a complaint first decide whether to proceed in the matter or close the same and if the Lokpal decides to proceed further, it shall order the preliminary inquiry against any public servant by its Inquiry Wing or any agency (including the Delhi Special Police Establishment) to ascertain whether there exists a *prima facie* case for proceeding in the matter:

Provided that the Lokpal shall if it has decided to proceed with the preliminary inquiry, by a general or special order, refer the complaints or a category of complaints or a complaint received by it in respect of public servants belonging to Group A or Group B or Group C or Group D to the Central Vigilance Commission constituted under sub-section (1) of section 3 of the Central Vigilance Commission Act, 2003:

45 of 2003.

Provided further that the Central Vigilance Commission in respect of complaints referred to it under the first proviso, after making preliminary inquiry in respect of public servants belonging to Group A and Group B, shall submit its report to the Lokpal in accordance with the provisions contained in sub-sections (2) and (4) and in case of public servants belonging to Group C and Group D, the Commission shall proceed in accordance with the provisions of the Central Vigilance Commission Act, 2003.

45 of 2003.

(2) During the preliminary inquiry referred to in sub-section (1), the Inquiry Wing or any agency (including the Delhi Special Police Establishment) shall conduct a preliminary inquiry and on the basis of material, information and documents collected seek the comments on the allegations made in the complaint from the public servant and the competent authority and after obtaining the comments of the concerned public servant and the competent authority, submit, within sixty days from the date of receipt of the reference, a report to the Lokpal.

(3) A bench consisting of not less than three Members of the Lokpal shall consider every report received under sub-section (2) from the Inquiry Wing or any agency (including the Delhi Special Police Establishment), and after giving an opportunity of being heard to the public servant, decide whether there exists a *prima facie* case, and to proceed with one or more of the following actions, namely:—

(a) investigation by any agency or the Delhi Special Police Establishment, as the case may be;

(b) initiation of the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority;

(c) closure of the proceedings against the public servant and to proceed against the complainant under section 46.

(4) Every preliminary inquiry referred to in sub-section (1) shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.

(5) In case the Lokpal decides to proceed to investigate into the complaint, it shall direct any agency (including the Delhi Special Police Establishment) to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order and submit the investigation report containing its findings to the Lokpal:

Provided that the Lokpal may extend the said period by a further period of six months for the reasons to be recorded in writing.

2 of 1974.

(6) Notwithstanding anything contained in section 173 of the Code of Criminal Procedure, 1973, any agency (including the Delhi Special Police Establishment) shall, in respect of cases referred to it by the Lokpal, submit the investigation report to the Lokpal.

(7) A bench consisting of not less than three Members of the Lokpal shall consider every report received by it under sub-section (6) from any agency (including the Delhi Special Police Establishment) and may decide to—

(a) file charge-sheet or closure report before the Special Court against the public servant;

(b) initiate the departmental proceedings or any other appropriate action against the concerned public servant by the competent authority.

(8) The Lokpal may, after taking a decision under sub-section (7) on the filing of the charge-sheet, direct its Prosecution Wing to initiate prosecution in the Special Court in respect of the cases investigated by any agency (including the Delhi Special Police Establishment).

(9) The Lokpal may, during the preliminary inquiry or the investigation, as the case may be, pass appropriate orders for the safe custody of the documents relevant to the preliminary inquiry or, as the case may be, investigation as it deems fit.

(10) The website of the Lokpal shall, from time to time and in such manner as may be specified by regulations, display to the public, the status of number of complaints pending before it or disposed of by it.

(11) The Lokpal may retain the original records and evidences which are likely to be required in the process of preliminary inquiry or investigation or conduct of a case by it or by the Special Court.

(12) Save as otherwise provided, the manner and procedure of conducting a preliminary inquiry or investigation (including such material and documents to be made available to the public servant) under this Act, shall be such as may be specified by regulations.

21. If, at any stage of the proceeding, the Lokpal—

(a) considers it necessary to inquire into the conduct of any person other than the accused; or

(b) is of opinion that the reputation of any person other than an accused is likely to be prejudicially affected by the preliminary inquiry,

the Lokpal shall give to that person a reasonable opportunity of being heard in the preliminary inquiry and to produce evidence in his defence, consistent with the principles of natural justice.

22. Subject to the provisions of this Act, for the purpose of any preliminary inquiry or investigation, the Lokpal or the investigating agency, as the case may be, may require any public servant or any other person who, in its opinion, is able to furnish information or produce documents relevant to such preliminary inquiry or investigation, to furnish any such information or produce any such document.

Persons likely to be prejudicially affected to be heard.

Lokpal may require any public servant or any other person to furnish information, etc.

Previous sanction not necessary for investigation and initiating prosecution by Lokpal in certain cases.

23. (1) No sanction or approval of any authority shall be required by the Lokpal for conducting a preliminary inquiry or an investigation on the direction of the Lokpal, under section 197 of the Code of Criminal Procedure, 1973 or section 6A of the Delhi Special Police Establishment Act, 1946 or section 19 of the Prevention of Corruption Act, 1988, as the case may be, for the purpose of making preliminary inquiry by the Inquiry Wing or any agency (including the Delhi Special Police Establishment) or investigation by any agency (including the Delhi Special Police Establishment) into any complaint against any public servant or for filing of any charge sheet or closure report on completion of investigation in respect thereof before the Special Court under this Act.

2 of 1974.
25 of 1946.
49 of 1988.

(2) A Special Court may, notwithstanding anything contained in section 197 of the Code of Criminal Procedure, 1973 or section 19 of the Prevention of Corruption Act, 1988, on filing of a charge sheet in accordance with the provisions of sub-section (7) of section 20, take cognizance of offence committed by any public servant.

2 of 1974.
49 of 1988.

(3) Nothing contained in sub-sections (1) and (2) shall apply in respect of the persons holding office in pursuance of the provisions of the Constitution and in respect of which a procedure for removal of such person has been specified therein.

(4) The provisions contained in sub-sections (1), (2) and (3) shall be without prejudice to the generality of the provisions contained in article 311 and sub-clause (c) of clause (3) of article 320 of the Constitution.

Action on investigation against public servant being Prime Minister, Ministers or Members of Parliament.

24. (1) Where, after the conclusion of the investigation, the findings of the Lokpal disclose the commission of an offence under the Prevention of Corruption Act, 1988 by a public servant referred to in clause (a) or clause (b) or clause (c) of sub-section (1) of section 14, the Lokpal may file a case in the Special Court and shall send a copy of the report together with its findings to the competent authority.

49 of 1988.

(2) The House of the People in the case of the Prime Minister, the Prime Minister in the case of the Minister, the Speaker in the case of a Member of the House of the People, and the Chairman of the Council of States in the case of a Member of that Council shall, as soon as may be, after the receipt of report under sub-section (1), cause the same to be laid before the House of the People or the Council of States, as the case may be, while it is in session, and if the House of the People or the Council of States, as the case may be, is not in session, within a period of one week from the reassembly of the said House or the Council, as the case may be.

(3) The competent authority shall examine or cause to be examined the report forwarded to it under sub-section (1) and communicate or cause to be communicated to the Lokpal, within a period of ninety days from the date of receipt of the report, the action taken or proposed to be taken on the basis of the report and the reasons for not taking any action on the recommendation of the Lokpal.

Explanation.—In computing the period of ninety days referred to in this sub-section, any period during which Parliament or, as the case may be, either House of Parliament, is not in session, shall be excluded.

CHAPTER VIII

POWERS OF LOKPAL

Supervisory powers of Lokpal.

25. (1) The Lokpal shall, notwithstanding anything contained in section 4 of the Delhi Special Police Establishment Act, 1946 and section 8 of the Central Vigilance Commission Act, 2003, have the powers of superintendence and direction, over the Delhi Special Police Establishment in respect of the matters referred by the Lokpal for preliminary inquiry or investigation to the Delhi Special Police Establishment under this Act:

25 of 1946.
45 of 2003.

Provided that while exercising powers of superintendence or giving direction under this sub-section, the Lokpal shall not exercise powers in such a manner so as to require any agency (including the Delhi Special Police Establishment) to whom the investigation has been given, to investigate and dispose of any case in a particular manner.

(2) The Central Vigilance Commission shall send a statement, at such interval as the Lokpal may direct, to the Lokpal in respect of action taken on complaints referred to it under the second proviso to sub-section (1) of section 20 and on receipt of such statement, the Lokpal may issue guidelines for effective and expeditious disposal of such cases.

26. (1) If the Lokpal has reason to believe that any document which, in its opinion, shall be useful for, or relevant to, any investigation under this Act, are secreted in any place, it may authorise any agency (including the Delhi Special Police Establishment) to whom the investigation has been given to search for and to seize such documents.

Search and seizure.

(2) If the Lokpal is satisfied that any document seized under sub-section (1) may be used as evidence for the purpose of any investigation under this Act and that it shall be necessary to retain the document in its custody or in the custody of such officer as may be authorised, it may so retain or direct such authorised officer to retain such document till the completion of such investigation:

Provided that where any document is required to be returned, the Lokpal or the authorised officer may return the same after retaining copies of such document duly authenticated.

27. (1) Subject to the provisions of this section, for the purpose of any preliminary inquiry, the Inquiry Wing of the Lokpal shall have all the powers of a civil court, under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

Lokpal to have powers of civil court in certain cases.

(i) summoning and enforcing the attendance of any person and examining him on oath;

(ii) requiring the discovery and production of any document;

(iii) receiving evidence on affidavits;

(iv) requisitioning any public record or copy thereof from any court or office;

(v) issuing commissions for the examination of witnesses or documents:

Provided that such commission, in case of a witness, shall be issued only where the witness, in the opinion of the Lokpal, is not in a position to attend the proceeding before the Lokpal; and

(vi) such other matters as may be prescribed.

(2) Any proceeding before the Lokpal shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code.

28. (1) The Lokpal may, for the purpose of conducting any preliminary inquiry or investigation, utilise the services of any officer or organisation or investigating agency of the Central Government or any State Government, as the case may be.

Power of Lokpal to utilise services of officers of Central or State Government.

(2) For the purpose of preliminary inquiry or investigating into any matter pertaining to such inquiry or investigation, any officer or organisation or agency whose services are utilised under sub-section (1) may, subject to the superintendence and direction of the Lokpal,—

(a) summon and enforce the attendance of any person and examine him;

(b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof from any office.

(3) The officer or organisation or agency whose services are utilised under sub-section (2) shall inquire or, as the case may be, investigate into any matter pertaining to the preliminary inquiry or investigation and submit a report thereon to the Lokpal within such period as may be specified by it in this behalf.

29. (1) Where the Lokpal or any officer authorised by it in this behalf, has reason to believe, the reason for such belief to be recorded in writing, on the basis of material in his possession, that—

Provisional attachment of assets.

(a) any person is in possession of any proceeds of corruption;

5 of 1908.

45 of 1860.

(b) such person is accused of having committed an offence relating to corruption;
and

(c) such proceeds of offence are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of offence,

the Lokpal or the authorised officer may, by order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 and the Lokpal and the officer shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule.

43 of 1961.

(2) The Lokpal or the officer authorised in this behalf shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Special Court, in a sealed envelope, in the manner as may be prescribed and such Court may extend the order of attachment and keep such material for such period as the Court may deem fit.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or after the expiry of the period as directed by the Special Court under sub-section (2).

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) or sub-section (2), from such enjoyment.

Explanation.—For the purposes of this sub-section, "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

Confirmation
of attachment
of assets.

30. (1) The Lokpal, when it provisionally attaches any property under sub-section (1) of section 29 shall, within a period of thirty days of such attachment, direct its Prosecution Wing to file an application stating the facts of such attachment before the Special Court and make a prayer for confirmation of attachment of the property till completion of the proceedings against the public servant in the Special Court.

(2) The Special Court may, if it is of the opinion that the property provisionally attached had been acquired through corrupt means, make an order for confirmation of attachment of such property till the completion of the proceedings against the public servant in the Special Court.

(3) If the public servant is subsequently acquitted of the charges framed against him, the property, subject to the orders of the Special Court, shall be restored to the concerned public servant along with benefits from such property as might have accrued during the period of attachment.

(4) If the public servant is subsequently convicted of the charges of corruption, the proceeds relating to the offence under the Prevention of Corruption Act, 1988 shall be confiscated and vest in the Central Government free from any encumbrance or leasehold interest excluding any debt due to any bank or financial institution.

49 of 1988.

Explanation.—For the purposes of this sub-section, the expressions "bank", "debt" and "financial institution" shall have the meanings respectively assigned to them in clauses (d), (g) and (h) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

51 of 1993.

Confiscation of
assets,
proceeds,
receipts and
benefits arisen
or procured by
means of
corruption in
special
circumstances.

31. (1) Without prejudice to the provisions of sections 29 and 30, where the Special Court, on the basis of *prima facie* evidence, has reason to believe or is satisfied that the assets, proceeds, receipts and benefits, by whatever name called, have arisen or procured by means of corruption by the public servant, it may authorise the confiscation of such assets, proceeds, receipts and benefits till his acquittal.

(2) Where an order of confiscation made under sub-section (1) is modified or annulled by the High Court or where the public servant is acquitted by the Special Court, the assets, proceeds, receipts and benefits, confiscated under sub-section (1) shall be returned to such

public servant, and in case it is not possible for any reason to return the assets, proceeds, receipts and benefits, such public servant shall be paid the price thereof including the money so confiscated with interest at the rate of five per cent. per annum thereon calculated from the date of confiscation.

32. (1) Where the Lokpal, while making a preliminary inquiry into allegations of corruption, is prima facie satisfied, on the basis of evidence available,—

(i) that the continuance of the public servant referred to in clause (d) or clause (e) or clause (f) of sub-section (1) of section 14 in his post while conducting the preliminary inquiry is likely to affect such preliminary inquiry adversely; or

(ii) such public servant is likely to destroy or in any way tamper with the evidence or influence witnesses,

Power of Lokpal to recommend transfer or suspension of public servant connected with allegation of corruption.

then, the Lokpal may recommend to the Central Government for transfer or suspension of such public servant from the post held by him till such period as may be specified in the order.

(2) The Central Government shall ordinarily accept the recommendation of the Lokpal made under sub-section (1), except for the reasons to be recorded in writing in a case where it is not feasible to do so for administrative reasons.

33. The Lokpal may, in the discharge of its functions under this Act, issue appropriate directions to a public servant entrusted with the preparation or custody of any document or record—

(a) to protect such document or record from destruction or damage; or

(b) to prevent the public servant from altering or secreting such document or record; or

(c) to prevent the public servant from transferring or alienating any assets allegedly acquired by him through corrupt means.

Power of Lokpal to give directions to prevent destruction of records during preliminary inquiry.

34. The Lokpal may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any administrative or financial power conferred on it may also be exercised or discharged by such of its Members or officers or employees as may be specified in the order.

Power to delegate.

CHAPTER IX

SPECIAL COURTS

35. (1) The Central Government shall constitute such number of Special Courts, as recommended by the Lokpal, to hear and decide the cases arising out of the Prevention of Corruption Act, 1988 or under this Act.

Special Courts to be constituted by Central Government.

(2) The Special Courts constituted under sub-section (1) shall ensure completion of each trial within a period of one year from the date of filing of the case in the Court:

Provided that in case the trial cannot be completed within a period of one year, the Special Court shall record reasons therefor and complete the trial within a further period of not more than three months or such further periods not exceeding three months each, for reasons to be recorded in writing before the end of each such three month period, but not exceeding a total period of two years.

36. (1) Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973 if, in the course of an preliminary inquiry or investigation into an offence or other proceeding under this Act, an application is made to a Special Court by an officer of the Lokpal authorised in this behalf that any evidence is required in connection with the preliminary inquiry or investigation into an offence or proceeding under this Act and he is of the opinion that such evidence may be available in any place in a contracting State, and the Special Court, on being satisfied that such evidence is required in connection with the preliminary

Letter of request to a contracting State in certain cases.

inquiry or investigation into an offence or proceeding under this Act, may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to—

- (i) examine the facts and circumstances of the case;
- (ii) take such steps as the Special Court may specify in such letter of request;
- and
- (iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.

(2) The letter of request shall be transmitted in such manner as the Central Government may prescribe in this behalf.

(3) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be evidence collected during the course of the preliminary inquiry or investigation.

CHAPTER X

COMPLAINTS AGAINST CHAIRPERSON, MEMBERS AND OFFICIALS OF LOKPAL

Removal and suspension of Chairperson and Members of Lokpal.

37. (1) The Lokpal shall not inquire into any complaint made against the Chairperson or any Member.

(2) Subject to the provisions of sub-section (4), the Chairperson or any Member shall be removed from his office by order of the President on grounds of misbehaviour after the Supreme Court, on a reference being made to it—

- (i) by the President; or
- (ii) by the President on a petition being signed by at least one hundred Members of Parliament; or
- (iii) by the President on receipt of a petition made by a citizen of India and where the President is satisfied that the petition should be referred,

has, on an inquiry held in accordance with the procedure prescribed in that behalf, reported that the Chairperson or such Member, as the case may be, ought to be removed on such ground.

(3) The President may suspend from office the Chairperson or any Member in respect of whom a reference has been made to the Supreme Court under sub-section (2) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(4) Notwithstanding anything contained in sub-section (2), the President may, by order, remove from the office, the Chairperson or any Member if the Chairperson or such Member, as the case may be,—

- (a) is adjudged an insolvent; or
- (b) engages, during his term of office, in any paid employment outside the duties of his office; or
- (c) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

(5) If the Chairperson or any Member is, or becomes, in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (2), be deemed to be guilty of misbehaviour.

49 of 1988.

38. (1) Every complaint of allegation or wrongdoing made against any officer or employee or agency (including the Delhi Special Police Establishment), under or associated with the Lokpal for an offence punishable under the Prevention of Corruption Act, 1988 shall be dealt with in accordance with the provisions of this section.

Complaints
against
officials of
Lokpal.

(2) The Lokpal shall complete the inquiry into the complaint or allegation made within a period of thirty days from the date of its receipt.

(3) While making an inquiry into the complaint against any officer or employee of the Lokpal or agency engaged or associated with the Lokpal, if it is *prima facie* satisfied on the basis of evidence available, that—

(a) continuance of such officer or employee of the Lokpal or agency engaged or associated in his post while conducting the inquiry is likely to affect such inquiry adversely; or

(b) an officer or employee of the Lokpal or agency engaged or associated is likely to destroy or in any way tamper with the evidence or influence witnesses,

then, the Lokpal may, by order, suspend such officer or employee of the Lokpal or divest such agency engaged or associated with the Lokpal of all powers and responsibilities hereto before exercised by it.

49 of 1988.

(4) On the completion of the inquiry, if the Lokpal is satisfied that there is *prima facie* evidence of the commission of an offence under the Prevention of Corruption Act, 1988 or of any wrongdoing, it shall, within a period of fifteen days of the completion of such inquiry, order to prosecute such officer or employee of the Lokpal or such officer, employee, agency engaged or associated with the Lokpal and initiate disciplinary proceedings against the official concerned:

Provided that no such order shall be passed without giving such officer or employee of the Lokpal, such officer, employee, agency engaged or associated, a reasonable opportunity of being heard.

CHAPTER XI

ASSESSMENT OF LOSS AND RECOVERY THEREOF BY SPECIAL COURT

49 of 1988.

39. If any public servant is convicted of an offence under the Prevention of Corruption Act, 1988 by the Special Court, notwithstanding and without prejudice to any law for the time being in force, it may make an assessment of loss, if any, caused to the public exchequer on account of the actions or decisions of such public servant not taken in good faith and for which he stands convicted, and may order recovery of such loss, if possible or quantifiable, from such public servant so convicted:

Assessment
of loss and
recovery
thereof by
Special Court.

Provided that if the Special Court, for reasons to be recorded in writing, comes to the conclusion that the loss caused was pursuant to a conspiracy with the beneficiary or beneficiaries of actions or decisions of the public servant so convicted, then such loss may, if assessed and quantifiable under this section, also be recovered from such beneficiary or beneficiaries proportionately.

CHAPTER XII

FINANCE, ACCOUNTS AND AUDIT

40. The Lokpal shall prepare, in such form and at such time in each financial year as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Lokpal and forward the same to the Central Government for information.

Budget.

41. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Lokpal grants of such sums of money as are required to be paid for the salaries and allowances payable to the Chairperson and Members and the administrative expenses, including the salaries and allowances and pension payable to or in respect of officers and other employees of the Lokpal.

Grants by
Central
Government.

Annual
statement of
accounts.

42. (1) The Lokpal shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Lokpal shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him.

(3) The Comptroller and Auditor-General of India or any person appointed by him in connection with the audit of the accounts of the Lokpal under this Act shall have the same rights, privileges and authority in connection with such audit, as the Comptroller and Auditor-General of India generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Lokpal.

(4) The accounts of the Lokpal, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government and the Central Government shall cause the same to be laid before each House of Parliament.

Furnishing of
returns, etc.,
to Central
Government.

43. The Lokpal shall furnish to the Central Government, at such time and in such form and manner as may be prescribed or as the Central Government may request, such returns and statements and such particulars in regard to any matter under the jurisdiction of the Lokpal, as the Central Government may, from time to time, require.

CHAPTER XIII

DECLARATION OF ASSETS

Declaration of
assets.

44. (1) Every public servant shall make a declaration of his assets and liabilities in the manner as provided by or under this Act.

(2) A public servant shall, within a period of thirty days from the date on which he makes and subscribes an oath or affirmation to enter upon his office, furnish to the competent authority the information relating to—

(a) the assets of which he, his spouse and his dependent children are, jointly or severally, owners or beneficiaries;

(b) his liabilities and that of his spouse and his dependent children.

(3) A public servant holding his office as such, at the time of the commencement of this Act, shall furnish information relating to such assets and liabilities, as referred to in sub-section (2), to the competent authority within thirty days of the coming into force of this Act.

(4) Every public servant shall file with the competent authority, on or before the 31st July of every year, an annual return of such assets and liabilities, as referred to in sub-section (2), as on the 31st March of that year.

(5) The information under sub-section (2) or sub-section (3) and annual return under sub-section (4) shall be furnished to the competent authority in such form and in such manner as may be prescribed.

(6) The competent authority in respect of each office or Department shall ensure that all such statements are published on the website of such officer or Department by 31st August of that year.

Explanation.—For the purposes of this section, “dependent children” means sons and daughters who have no separate means of earning and are wholly dependent on the public servant for their livelihood.

45. If any public servant wilfully or for reasons which are not justifiable, fails to—

(a) declare his assets; or

(b) give misleading information in respect of such assets and is found to be in possession of assets not disclosed or in respect of which misleading information was furnished,

Presumption as to acquisition of assets by corrupt means in certain cases.

then, such assets shall, unless otherwise proved, be presumed to belong to the public servant and shall be presumed to be assets acquired by corrupt means:

Provided that the competent authority may condone or exempt the public servant from furnishing information in respect of assets not exceeding such minimum value as may be prescribed.

CHAPTER XIV

OFFENCES AND PENALTIES

46. (1) Notwithstanding anything contained in this Act, whoever makes any false and frivolous or vexatious complaint under this Act shall, on conviction, be punished with imprisonment for a term which may extend to one year and with fine which may extend to one lakh rupees.

Prosecution for false complaint and payment of compensation, etc., to public servant.

(2) No Court, except a Special Court, shall take cognizance of an offence under sub-section (1).

(3) No Special Court shall take cognizance of an offence under sub-section (1) except on a complaint made by a person against whom the false, frivolous or vexatious complaint was made or by an officer authorised by the Lokpal.

(4) The prosecution in relation to an offence under sub-section (1) shall be conducted by the public prosecutor and all expenses connected with such prosecution shall be borne by the Central Government.

(5) In case of conviction of a person [being an individual or society or association of persons or trust (whether registered or not)], for having made a false complaint under this Act, such person shall be liable to pay compensation to the public servant against whom he made the false complaint in addition to the legal expenses for contesting the case by such public servant, as the Special Court may determine.

(6) Nothing contained in this section shall apply in case of complaints made in good faith.

Explanation.—For the purpose of this sub-section, the expression "good faith" shall have the same meaning assigned to it in section 52 of the Indian Penal Code.

45 of 1860.

47. (1) Where any offence under sub-section (1) of section 46 has been committed by any society or association of persons or trust (whether registered or not), every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the society or association of persons or trust, for the conduct of the business or affairs or activities of the society or association of persons or trust as well as such society or association of persons or trust shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

False complaint made by society or association of persons or trust.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a society or association of persons or trust (whether registered or not) and it is proved that the offence has been committed with the consent or

connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of such society or association of persons or trust, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

CHAPTER XV

MISCELLANEOUS

Reports of
Lokpal.

48. It shall be the duty of the Lokpal to present annually to the President a report on the work done by the Lokpal and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, in respect of cases, if any, where the advice of the Lokpal was not accepted, the reason for such non-acceptance to be laid before each House of Parliament.

Lokpal to
function as
appellate
authority for
appeals
arising out of
any other law
for the time
being in
force.

49. The Lokpal shall function as the final appellate authority in respect of appeals arising out of any other law for the time being in force providing for delivery of public services and redressal of public grievances by any public authority in cases where the decision contains findings of corruption under the Prevention of Corruption Act, 1988.

49 of 1988.

Protection of
action taken
in good faith
by any public
servant.

50. No suit, prosecution or other legal proceedings under this Act shall lie against any public servant, in respect of anything which is done in good faith or intended to be done in the discharge of his official functions or in exercise of his powers.

Protection of
action taken
in good faith
by others.

51. No suit, prosecution or other legal proceedings shall lie against the Lokpal or against any officer, employee, agency or any person, in respect of anything which is done in good faith or intended to be done under this Act or the rules or the regulations made thereunder.

Members,
officers and
employees of
Lokpal to be
public
servants.

52. The Chairperson, Members, officers and other employees of the Lokpal shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Limitation to
apply in
certain cases.

53. The Lokpal shall not inquire or investigate into any complaint, if the complaint is made after the expiry of a period of seven years from the date on which the offence mentioned in such complaint is alleged to have been committed.

Bar of
Jurisdiction.

54. No civil court shall have jurisdiction in respect of any matter which the Lokpal is empowered by or under this Act to determine.

Legal
assistance.

55. The Lokpal shall provide to every person against whom a complaint has been made before it under this Act, legal assistance to defend his case before the Lokpal, if such assistance is requested for.

Act to have
overriding
effect.

56. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

Provisions of
this Act to be
in addition of
other laws.

57. The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

58. The enactments specified in the Schedule shall be amended in the manner specified therein.

Amendment
of certain
enactments.

59. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

Power to
make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the form of complaint referred to in clause (d) of sub-section (1) of section 2;
- (b) the term of the Search Committee, the fee and allowances payable to its members and the manner of selection of panel of names under sub-section (5) of section 4;
- (c) the post or posts in respect of which the appointment shall be made after consultation with the Union Public Service Commission under the proviso to sub-section (3) of section 10;
- (d) other matters for which the Lokpal shall have the powers of a civil court under clause (vi) of sub-section (1) of section 27;
- (e) the manner of sending the order of attachment along with the material to the Special Court under sub-section (2) of section 29;
- (f) the manner of transmitting the letter of request under sub-section (2) of section 36;
- (g) the form and the time for preparing in each financial year the budget for the next financial year, showing the estimated receipts and expenditure of the Lokpal under section 40;
- (h) the form for maintaining the accounts and other relevant records and the form of annual statement of accounts under sub-section (1) of section 42;
- (i) the form and manner and the time for preparing the returns and statements along with particulars under sub-section (1) of section 43;
- (j) the form and the time for preparing an annual report giving a summary of its activities during the previous year under sub-section (2) of section 43;
- (k) the form of annual return to be filed by a public servant under sub-section (5) of section 44;
- (l) the minimum value for which the competent authority may condone or exempt a public servant from furnishing information in respect of assets under the proviso to section 45;
- (m) any other matter which is to be or may be prescribed.

60. (1) Subject to the provisions of this Act and the rules made thereunder, the Lokpal may, by notification in the Official Gazette, make regulations to carry out the provisions of this Act.

Power of
Lokpal to
make
regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

- (a) the conditions of service of the secretary and other officers and staff of the Lokpal and the matters which in so far as they relate to salaries, allowances, leave or pensions, require the approval of the President under sub-section (4) of section 10;
- (b) the place of sittings of benches of the Lokpal under clause (f) of sub-section (1) of section 16;

(c) the manner for displaying on the website of the Lokpal, the status of all complaints pending or disposed of along with records and evidence with reference thereto under sub-section (9) of section 20;

(d) the manner and procedure of conducting an preliminary inquiry or investigation under sub-section (11) of section 20;

(e) any other matter which is required to be, or may be, specified under this Act.

Laying of
rules and
regulations.

61. Every rule and regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation, or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

Power to
remove
difficulties.

62. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as may appear to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

PART III

LOKAYUKTA FOR A STATE

CHAPTER I

DEFINITIONS

Definitions.

63. (1) In this Part unless the context otherwise requires,—

(a) "Bench" means a Bench of the Lokayukta;

(b) "Chairperson" means the Chairperson of the Lokayukta;

(c) "competent authority", in relation to—

(i) the Chief Minister, means the Legislative Assembly of the State;

(ii) a member of the Council of Ministers, means the Chief Minister;

(iii) a member of State Legislature other than a Minister means—

(A) in the case of a member of the Legislative Council, the Chairman of that Council; and

(B) in the case of a member of the Legislative Assembly, the Speaker of that House;

(iv) an officer in the Ministry or Department of the State Government means the Minister in charge of the Ministry or Department under which such officer is serving;

(v) a chairperson or members of any body, or Board or corporation or authority or company or society or autonomous body (by whatever name called) established or constituted under an Act of Parliament or of a State Legislature or wholly or partly financed by the Central Government or the State Government or

controlled by it, means the Minister in charge of the administrative Ministry of such body, or Board or corporation or authority or company or society or autonomous body;

(vi) an officer of any body or Board or corporation or authority or company or society or autonomous body (by whatever name called) established or constituted under an Act of Parliament or of a State Legislature or wholly or partly financed by the Central Government or the State Government or controlled by it, means the head of such body or Board or corporation or authority or company or society or autonomous body;

(vii) in any other case not falling under sub-clauses (i) to (v) above, means such department or authority as the State Government may, by notification, specify:

Provided that if any person referred to in sub-clause (iv) or sub-clause (v) is also a Member of the State Legislature, then the competent authority shall be—

(A) in case such member is a Member of the Legislative Council, the Chairman of that Council; and

(B) in case such member is a Member of the Legislative Assembly, the Speaker of that House;

(f) "investigation" means an investigation defined under clause (h) of section 2 of the Code of Criminal Procedure, 1973;

(g) "Judicial Member" means a Judicial Member of the Lokayukta appointed as such;

(h) "Lokayukta" means the body established under section 64;

(i) "Member" means a Member of the Lokayukta;

(j) "Minister" means Minister of a State Government but does not include the Chief Minister;

(k) "preliminary inquiry" means an inquiry conducted under this Act by the Lokayukta;

(2) The words and expressions used herein and not defined in this part but defined in section 2 of this Act or defined in the Prevention of Corruption Act, 1988, shall have the meanings respectively assigned to them in the said Acts.

CHAPTER II

ESTABLISHMENT OF LOKAYUKTA

64. (1) As from the commencement of this Act, there shall be established in a State, by notification in the Official Gazette, for the purpose of making preliminary inquiry, investigation and prosecution in respect of complaints made under this Act, a body to be called the "Lokayukta".

Establishment
of Lokayukta.

(2) The Lokayukta shall consist of—

(a) a Chairperson, who is or has been a Chief Justice of the High Court or a Judge of the High Court or an eminent person who fulfils the eligibility specified in clause (b) of sub-section (3); and

(b) such number of Members, not exceeding eight out of whom fifty per cent., shall be Judicial Members:

Provided that not less than fifty per cent. of the Members of the Lokayukta shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women.

(3) A person shall be eligible to be appointed,—

(a) as a Judicial Member if he is or has been a Judge of the High Court;

(b) as a Member other than a Judicial Member, if he is a person of impeccable integrity, outstanding ability having special knowledge and expertise of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law, and management.

(4) The Chairperson or a Member shall not be —

(i) a member of Parliament or a member of the Legislature of any State or Union territory;

(ii) a person convicted of any offence involving moral turpitude;

(iii) a person of less than forty-five years of age, on the date of assuming office as Chairperson or Member, as the case may be;

(iv) a member of any Panchayat or Municipality;

(v) a person who has been removed or dismissed from service of the Union or a State,

and shall not hold any office of trust or profit (other than his office as the Chairperson or a Member) or be connected with any political party or carry on any business or practise any profession and accordingly, before he enters upon his office, a person appointed as the Chairperson or a Member, as the case may be, shall, if —

(a) he holds any office of trust or profit, resign from such office; or

(b) he is carrying on any business, sever his connection with the conduct and management of such business; or

(c) he is practising any profession, cease to practise such profession.

(5) The Lokayukta or State Lokpal (by whatever name called) constituted under any State law for the time being in force, before the commencement of this Act, and applicable to that State, shall continue to discharge their function and exercise powers conferred upon them under that law in respect of that State until such law is amended or repealed by the State Legislature so as to bring in conformity with this Act.

Appointment
of
Chairperson
and Members
on
recommendation
of Selection
Committee.

65. (1) The Chairperson and Members shall be appointed by the Governor after obtaining the recommendations of a Selection Committee consisting of—

(a) the Chief Minister — chairperson;

(b) the Speaker of the Legislative Assembly — member;

(c) the Leader of Opposition in the Legislative Assembly — member;

(d) the Chief Justice of the High Court of the State or a Judge of the High Court nominated by him — member;

(e) an eminent jurist nominated by the Governor — member;

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Selection Committee.

(3) The Selection Committee shall for the purposes of selecting the Chairperson and Members of the Lokayukta and for preparing a panel of persons to be considered for appointment as such, constitute a Search Committee consisting of at least seven persons of standing and having special knowledge and expertise in the matters relating to anti-corruption

policy, public administration, vigilance, policy making, finance including insurance and banking, law, and management, or in any other matter which, in the opinion of the Selection Committee, may be useful in making selection of the Chairperson and Members of the Lokayukta:

Provided that not less than fifty per cent., of the Members of the Search Committee shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women:

Provided further that the Selection Committee may also consider any person other than the persons recommended by the Search Committee.

(4) The Selection Committee shall regulate its own procedure for selecting the Chairperson and Members of the Lokayukta which shall be transparent.

(5) The term of the Search Committee referred to in sub-section (3), the fees and allowances payable to its members and the manner of selection of panel of names shall be such as may be prescribed.

66. The Governor shall take or cause to be taken all necessary steps for the appointment of a new Chairperson and Members at least three months before the expiry of the term of such Chairperson or Member, as the case may be, in accordance with the procedure laid down in this Act.

Filling of vacancies of Chairperson or Members.

67. The Chairperson and every Member shall, on the recommendations of the Selection Committee, be appointed by the Governor by warrant under his hand and seal and hold office as such for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier:

Term of office of Chairperson and Members.

Provided that he may—

(a) by writing under his hand addressed to the Governor, resign his office; or

(b) be removed from his office in the manner provided in this Act.

68. The Salary, allowances and other conditions of service of—

(i) the Chairperson shall be the same as those of the Chief Justice of the High Court;

(ii) other Members shall be the same as those of a Judge of the High Court:

Salary, allowances and other conditions of service of Chairperson and Members.

Provided that if the Chairperson or a Member is, at the time of his appointment, in receipt of pension (other than disability pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of service as the Chairperson or, as the case may be, as a Member, be reduced—

(a) by the amount of that pension; and

(b) if he has, before such appointment, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension:

Provided further that the salary, allowances and pension payable to, and other conditions of service of, the Chairperson or a Member shall not be varied to his disadvantage after his appointment.

69. (1) On ceasing to hold office, the Chairperson and every Member shall be ineligible for—

(i) re-appointment as the Chairperson or a Member of the Lokayukta;

(ii) any diplomatic assignment, appointment as administrator of a Union territory and such other assignment or appointment which is required by law to be made by the Governor by warrant under his hand and seal;

Restriction on employment by Chairperson and Members after ceasing to hold office.

(iii) further employment to any other office of profit under the Government of India or the Government of a State;

(iv) contesting any election of President or Vice President or Member of either House of Parliament or Member of either House of a State Legislature or Municipality or Panchayat within a period of five years from the date of relinquishing the post.

(2) Notwithstanding anything contained in sub-section (1), a Member shall be eligible to be appointed as a Chairperson, if his total tenure as Member and Chairperson does not exceed five years.

Explanation.— For the purposes of this section, it is hereby clarified that where the Member is appointed as the Chairperson, his term of office shall not be more than five years in aggregate as the Member and the Chairperson.

Member to
act as
Chairperson
or to
discharge his
functions in
certain
circumstances.

70. (1) In the event of occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Governor may, by notification, authorise the senior-most Member to act as the Chairperson until the appointment of a new Chairperson to fill such vacancy.

(2) When the Chairperson is unable to discharge his functions owing to absence on leave or otherwise, the senior-most Member available, as the Governor may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Secretary,
other officers
and staff of
Lokayukta.

71. (1) There shall be a Secretary to the Lokayukta in the rank of Secretary to the State Government, who shall be appointed by the Chairperson from a panel of names sent by the State Government.

(2) There shall be a Director of Inquiry and Director of Prosecution not below the rank of the Additional Secretary to the State Government or equivalent, who shall be appointed by the Chairperson from a panel of names sent by the State Government.

(3) The appointment of secretary and other officers and staff of the Lokayukta shall be made by the Chairperson or such Member or officer of Lokayukta as the Chairperson may direct:

Provided that the Governor may by rule require that the appointment in respect of any post or posts as may be specified in the rule, shall be made after consultation with the State Public Service Commission.

(4) Subject to the provisions of any law made by the State Legislature, the conditions of service of secretary and other officers and staff of the Lokayukta shall be such as may be specified by regulations made by the Lokayukta for the purpose:

Provided that the regulations made under this sub-section shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor.

CHAPTER III

INQUIRY WING

Inquiry Wing.

72. (1) Notwithstanding anything contained in any law for the time being in force, the Lokayukta shall constitute an Inquiry Wing headed by the Director of Inquiry for the purpose of conducting preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988:

49 of 1988.

Provided that till such time the Inquiry Wing is constituted by the Lokayukta, the State Government shall make available such number of officers and other staff from such of its Ministries or Departments, as may be required by the Lokayukta, for conducting preliminary inquiry under this Act.

(2) For the purposes of assisting the Lokayukta in conducting a preliminary inquiry under this Act, the officers of the Inquiry Wing not below the rank of Under Secretary to that Government, shall have the same powers as are conferred upon the Lokayukta under section 88.

CHAPTER IV

PROSECUTION WING

73. (1) The Lokayukta shall, by notification, constitute a Prosecution Wing headed by the Director of Prosecution for the purpose of prosecution of public servants in relation to any complaint by the Lokayukta under this Act:

Appointment of Director of prosecution.

Provided that till such time the Prosecution Wing is constituted by the Lokayukta, the State Government shall make available such number of officers and other staff from such of its Ministries or Departments, as may be required by the Lokayukta, for conducting prosecution under this Act.

(2) The Director of prosecution shall, after having been so directed by the Lokayukta, file a case in accordance with the investigation report, before the Special Court, and take all necessary steps in respect of the prosecution of public servants in relation to any offence punishable under the Prevention of Corruption Act, 1988.

49 of 1988.

(3) The report under sub-section (2) shall be deemed to be a report, filed on completion of investigation, referred to in section 173 of the Code of Criminal Procedure, 1973.

2 of 1974.

CHAPTER V

EXPENSES OF LOKAYUKTA TO BE CHARGED ON CONSOLIDATED FUND OF STATE

74. The administrative expenses of the Lokayukta, including all salaries, allowances and pensions payable to or in respect of the Chairperson, Members or secretary or other officers or staff of the Lokayukta, shall be charged upon the Consolidated Fund of State and any fees or other moneys taken by the Lokayukta shall form part of that Fund.

Expenses of Lokayukta to be charged on Consolidated Fund of State.

CHAPTER VI

JURISDICTION IN RESPECT OF INQUIRY

75. (1) Subject to the other provisions of this Act, the Lokayukta shall inquire or cause an inquiry to be conducted into any matter involved in, or arising from, or connected with, any allegation of corruption made in a complaint in respect of the following, namely:—

Jurisdiction of Lokayukta to include Chief Minister, Ministers, Members of Legislatures, officers and employees of State Government.

(a) any person who is or has been a Chief Minister;

(b) any other person who is or has been a Minister of the State;

(c) any person who is or has been a Member of the State Legislature;

(d) all officers and employees of the State, from amongst the public servants defined in sub-clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 when serving or who has served, in connection with the affairs of the State;

49 of 1988.

(e) all officers and employees referred to in clause (d) or equivalent in any body or Board or corporation or authority or company or society or trust or autonomous body (by whatever name called) established by an Act of Parliament or of a State Legislature or wholly or partly financed by the State Government or controlled by it;

(f) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not), by whatever name called, wholly or partly financed or aided by the State Government and the annual income of which exceeds such amount as the State Government may by notification specify;

(g) any person who is or has been a director, manager, secretary or other officer of every other society or association of persons or trust (whether registered under any law for the time being in force or not) in receipt of any donation from the public and the annual income of which exceeds such amount as the State Government may by notification specify or from any foreign source under the Foreign Contribution (Regulation) Act, 2010 in excess of ten lakh rupees in a year or such higher amount as the Central Government may by notification specify;

42 of 2010.

Explanation.—For the purpose of clauses (f) and (g), it is hereby clarified that any entity or institution, by whatever name called, corporate, society, trust, association of persons, partnership, sole proprietorship, limited liability partnership (whether registered under any law for the time being in force or not), shall be the entities covered in those clauses:

Provided that any person referred to in this clause shall be deemed to be a public servant under clause (c) of section 2 of the Prevention of Corruption Act, 1988 and the provisions of that Act shall apply accordingly:

49 of 1988.

Provided further that nothing in clauses (e) and (f) and this clause shall apply to any society or association of persons or trust constituted for religious purpose.

(2) Notwithstanding anything contained in sub-section (1), the Lokayukta shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against any Member of the State Legislature in respect of anything said or a vote given by him in the State Legislature or any committee thereof covered under the provisions contained in clause (2) of article 194 of the Constitution.

(3) The Lokayukta may inquire into any act or conduct of any person other than those referred to in sub-section (1), if such person is involved in the act of abetting, bribe giving or bribe taking or conspiracy relating to any allegation of corruption under the Prevention of Corruption Act, 1988 against a person referred to in sub-section (1):

49 of 1988.

Provided that, no action under this section shall be taken in case of a person serving in connection with the affairs of the Union, without the consent of the Central Government.

(4) No matter in respect of which a complaint has been made to the Lokayukta under this Act shall be referred for inquiry under the Commissions of Inquiry Act, 1952.

60 of 1952.

Explanation.—For the removal of doubts, it is hereby declared that a complaint under this Act shall only relate to a period during which the public servant was holding or serving in that capacity.

Matters pending before any court or committee or authority for inquiry before Lokayukta not to be affected.

76. In case any matter or proceeding related to allegation of corruption under the Prevention of Corruption Act, 1988 has been pending before any court or committee of the State Legislature or before any other authority prior to commencement of this Act or prior to commencement of any inquiry after the commencement of this Act, such matter or proceeding shall be continued before such court, committee or authority.

49 of 1988.

Constitution of benches of Lokayukta.

77. (1) Subject to the provisions of this Act, —

(a) the jurisdiction of the Lokayukta may be exercised by benches thereof;

(b) a bench may be constituted by the Chairperson with two or more Members as the Chairperson may deem fit;

(c) every bench shall ordinarily consist of at least one Judicial Member;

(d) where a bench consists of the Chairperson, such bench shall be presided over by the Chairperson;

(e) where a bench consists of a Judicial Member, and a non-Judicial Member, not being the Chairperson, such bench shall be presided over by the Judicial Member;

(f) the benches of the Lokayukta shall ordinarily sit at Capital of the State and at such other places as the Lokayukta may, by regulations, specify.

(2) The Lokayukta shall notify the areas in relation to which each bench of the Lokayukta may exercise jurisdiction.

(3) Notwithstanding anything contained in sub-section (2), the Chairperson shall have the power to constitute or reconstitute benches from time to time.

(4) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such nature that it ought to be heard by a bench consisting of three or more Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such bench as the Chairperson may deem fit.

78. Where benches are constituted, the Chairperson may, from time to time, by notification, make provisions as to the distribution of the business of the Lokayukta amongst the benches and also provide for the matters which may be dealt with by each bench.

Distribution of business amongst benches.

79. On an application for transfer made by the complainant or the public servant, the Chairperson, after giving an opportunity of being heard to the complainant or the public servant, as the case may be, may transfer any case pending before one bench for disposal to any other bench.

Power of Chairperson to transfer cases.

80. If the Members of a bench consisting of an even number of Members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Lokayukta and such point or points shall be decided according to the opinion of the majority of the Members of the Lokayukta who have heard the case, including those who first heard it.

Decision to be by majority.

CHAPTER VII

PROCEDURE IN RESPECT OF PRELIMINARY INQUIRY AND INVESTIGATION

81. (1) The Lokayukta shall, on receipt of a complaint, first decide whether to proceed in the matter or close the same and if the Lokayukta decides to proceed further, it shall order the preliminary inquiry against any public servant by its Inquiry Wing or any agency (including any special investigation agency) to ascertain whether there exist a *prima facie* case for proceeding in the matter.

Provisions relating to complaints and preliminary inquiry and investigation.

(2) During the preliminary inquiry referred to in sub section (1), the Inquiry Wing or any agency shall conduct a preliminary inquiry and on the basis of material, information and documents collected, seek the comments on the allegations made in the complaint from the public servant and competent authority and after obtaining the comments of the concerned public servant and competent authority, submit, within sixty days from the date of receipt of the reference, a report to the Lokayukta.

(3) A bench consisting of not less than three Members of the Lokayukta shall consider every report received under sub-section (2) from the Inquiry Wing or any agency and after giving an opportunity of being heard to the public servant, decide as to whether there exists a *prima facie* case, and make recommendations to proceed with one or more of the following actions, namely:—

(a) investigation by its Investigation Wing or any investigating agency;

(b) initiation of the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority;

(c) closure of the proceedings against the public servant and take action to proceed against the complainant under section 46.

(4) Every preliminary inquiry referred to in sub-section (1) shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.

(5) In case the Lokayukta decides to proceed to investigate into the complaint, it shall either direct any investigation agency (including any special agency) to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order:

Provided that the Lokayukta may extend the said period by a further period of six months for the reasons to be recorded in writing.

(6) Notwithstanding anything contained in section 173 of the Code of Criminal Procedure, 1973, any agency (including any special agency) shall, in respect of cases referred to it by the Lokayukta, submit the investigation report to the Lokayukta.

2 of 1974.

(7) A bench consisting of not less than three Members of the Lokayukta shall consider every report received by it under sub-section (4) from the Investigation Wing or any other agency and may, decide as to—

(a) file charge-sheet or closure report before the Special Court against the public servant;

(b) initiate the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority.

(8) The Lokayukta may, after taking a decision under sub-section (6) on the filing of the charge-sheet, direct,—

(a) its prosecution Wing to initiate prosecution in the Special Court in respect of the cases investigated by the investigation agency (including any special agency); or

(b) any other agency in respect of the cases investigated by such agency on the direction of Lokayukta to obtain its approval and thereafter initiate prosecution in the Special Court and forward a copy of charge-sheet filed by it under this clause to the Lokayukta for the purposes of superintendence.

(9) The Lokayukta may, during the preliminary inquiry or the investigation, as the case may be, pass appropriate orders for the safe custody of the documents relevant to the preliminary inquiry or, as the case may be, investigation, as it deems fit.

(10) The website of the Lokayukta shall, from time to time and in such manner as may be specified by regulations, display to the public, the status of number of complaints pending before it or disposed of by it.

(11) The Lokayukta may retain the original records and evidences, which are likely to be required in the process of preliminary inquiry or investigation or conduct of a case by it or by the Special Court.

(12) Save as otherwise provided, the manner and procedure of conducting a preliminary inquiry or investigation (including such material and documents to be made available to the public servant) under this Act, shall be such as may be specified by regulations.

82. If, at any stage of the proceeding, the Lokayukta—

(a) considers it necessary to inquire into the conduct of any person other than the prospective accused; or

(b) is of opinion that the reputation of any person other than an accused is likely to be prejudicially affected by the preliminary inquiry,

the Lokayukta shall give to that person a reasonable opportunity of being heard in the preliminary inquiry and to produce evidence in his defence, consistent with the principles of natural justice.

Persons likely to be prejudicially affected to be heard.

83. Subject to the provisions of this Act, for the purpose of any preliminary inquiry or investigation, the Lokayukta or the investigating authority, as the case may be, may require any public servant or any other person who, in its opinion, is able to furnish information or produce documents relevant to such preliminary inquiry or investigation, to furnish any such information or produce any such document.

Lokayukta may require any public servant or any other person to furnish information, etc.

84. (1) No sanction or approval of any authority shall be required by the Lokayukta for conducting investigation by any agency in respect of the cases investigated by such agency on the direction of the Lokayukta, under section 197 of the Code of Criminal Procedure, 1973 or section 19 of the Prevention of Corruption Act, 1988, as the case may be, for the purpose of making preliminary inquiry by the Inquiry Wing or investigation by any agency into any complaint against any public servant or for filing of any charge sheet or closure report on completion of investigation in respect thereof before the Special Court under this Act.

Previous sanction not necessary for investigation and initiating prosecution by Lokayukta in certain cases.

(2) A Special Court may, notwithstanding anything contained in section 197 of the Code of Criminal Procedure, 1973 or section 19 of the Prevention of Corruption Act, 1988, on filing of a charge sheet on completion of investigation, by the Lokayukta or any officer authorised by it in this behalf, take cognizance of offence committed by any public servant.

(3) Nothing contained in sub-sections (1) and (2) shall apply in respect of the persons holding the office in pursuance of the provisions of the Constitution and in respect of which a procedure for removal of such person has been specified therein.

(4) The provisions contained in sub-sections (1), (2) and (3) shall be without prejudice to the generality of the provisions contained in article 311 and sub-clause (c) of clause (3) of article 320 of the Constitution.

85. (1) Where, after the conclusion of the preliminary inquiry or investigation, the findings of the Lokayukta disclose the commission of an offence under the Prevention of Corruption Act, 1988 by a public servant referred to in clause (a) or clause (b) of sub-section (1) of section 75, the Lokayukta may file a case in the Special Court and shall send a copy of the report together with its findings to the competent authority.

Action on inquiry against public servant being Chief Minister, Ministers or Members of State Legislature.

(2) The Legislative Assembly of the State in the case of Chief Minister, the Chief Minister in the case of the Minister, the Speaker in the case of a Member of the Legislative Assembly, and the Chairman of the Legislative Council of the State, where it exists, in the case of a Member of that Council shall, as soon as may be, after the receipt of report under sub-section (1), cause the same to be laid before the Legislative Assembly or the Legislative Council, as the case may be, while it is in session, and if the Legislative Assembly or the Legislative Council, is not in session, within a period of one week from the reassembly of the said Assembly or as the case may be the Council.

(3) The competent authority shall examine the report forwarded to it under sub-section (1) and communicate to the Lokayukta, within a period of ninety days from the date of receipt of the report, the action taken or proposed to be taken on the basis of the report and the reasons for not taking any action on the recommendation of the Lokayukta.

Explanation.— In computing the period of ninety days referred to in this sub-section, any period during which the State Legislature is not in session, shall be excluded.

CHAPTER VIII

POWERS OF LOKAYUKTA

Supervisory powers of Lokayukta.

86. The Lokayukta shall, notwithstanding anything contained in any other law for the time being in force, have the powers of superintendence and direction over the investigation agency in respect of the matters in so far as they relate to the investigation by such agency under this Act.

Search and seizure.

87. (1) If the Lokayukta has reason to believe that any document which, in its opinion, shall be useful for, or relevant to, any investigation under this Act, are secreted in any place, it may authorise any agency to whom the investigation has been given to search for and to seize such documents.

(2) If the Lokayukta is satisfied that any document seized under sub-section (1) may be used as evidence for the purpose of any preliminary inquiry or investigation under this Act and that it shall be necessary to retain the document in its custody or in the custody of such officer as may be authorised, it may so retain or direct such authorised officer to retain such document till the completion of such preliminary inquiry or investigation:

Provided that where any document is required to be returned, the Lokayukta or the authorised officer may return the same after retaining copies of such document duly authenticated.

Lokayukta to have powers of civil court in certain cases.

88. (1) Subject to the provisions of this section, for the purpose of any preliminary inquiry, the Inquiry Wing of the Lokayukta shall have all the powers of a civil court, under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

5 of 1908.

(i) summoning and enforcing the attendance of any person and examining him on oath;

(ii) requiring the discovery and production of any document;

(iii) receiving evidence on affidavits;

(iv) requisitioning any public record or copy thereof from any court or office;

(v) issuing commissions for the examination of witnesses or documents:

Provided that such commission, in case of a witness, shall be issued only where the witness, in the opinion of the Lokayukta, is not in a position to attend the proceeding before the Lokayukta; and

(vi) such other matters as may be prescribed.

(2) Any proceeding before the Lokayukta shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code.

45 of 1860.

Power of Lokayukta to utilise services of officers of State Government.

89. (1) The Lokayukta may, for the purpose of conducting any preliminary inquiry or investigation, utilise the services of any officer or organisation or investigation agency of the State Government.

(2) For the purpose of preliminary inquiry or investigating into any matter pertaining to such inquiry or investigation, any officer or organisation or agency whose services are utilised under sub-section (1) may, subject to the direction and control of the Lokayukta,—

(a) summon and enforce the attendance of any person and examine him;

(b) require the discovery and production of any document; and

(c) requisition any public record or copy thereof from any office.

(3) The officer or organisation or agency whose services are utilised under sub-section (2) shall inquire or, as the case may be investigate into any matter pertaining to the preliminary inquiry or investigation and submit a report thereon to the Lokayukta within such period as may be specified by it in this behalf.

90. (1) Where the Lokayukta or any investigation officer authorised by it in this behalf, has reason to believe, the reason for such belief to be recorded in writing, on the basis of material in his possession, that—

Provisional attachment of assets.

(a) any person is in possession of any proceeds of corruption;

(b) such person is accused of having committed an offence relating to corruption;

and

(c) such proceeds of offence are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of offence, he may, by order in writing, provisionally attach such property for a period not exceeding ninety days from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 and the Lokayukta shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule.

43 of 1961.

(2) The Lokayukta shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Special Court, in a sealed envelope, in the manner as may be prescribed and such Court may extend the order of attachment and keep such material for such period as the Court may deem fit.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or after the expiry of the period as directed by the Special Court under sub-section (2).

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) or sub-section (2), from such enjoyment.

Explanation.—For the purposes of this sub-section, "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

91. (1) The Lokayukta, when it provisionally attaches any property under sub-section (1) of section 90 shall, within a period of thirty days of such attachment, direct its prosecution wing to file an application stating the facts of such attachment before the Special Court and make a prayer for confirmation of attachment of the property till completion of the proceedings against the public servant in the Special Court.

Confirmation of attachment of assets.

(2) The Special Court may, if it is of the opinion that the property provisionally attached had been acquired through corrupt means, make an order for confirmation of attachment of such property till the completion of the proceedings against the public servant in the Special Court.

(3) If the public servant is subsequently acquitted of the charges framed against him, the property, subject to the orders of the Special Court, shall be restored to the concerned public servant along with benefits from such property as might have accrued during the period of attachment.

(4) If the public servant is subsequently convicted of the charges of corruption, the proceeds relatable to the offence under the Prevention of Corruption Act, 1988 shall be confiscated and vest in the Central Government free from any encumbrance or leasehold interest excluding any debt due to any bank or financial institution.

49 of 1988.

Explanation.—For the purposes of this sub-section, the expressions "bank", "debt" and "financial institution" shall have the meanings respectively assigned to them in clauses (d), (g) and (h) of section 2 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993.

51 of 1993.

Confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances.

92. (1) Without prejudice to the provisions of sections 90 and 91, where the Special Court, on the basis of *prima facie* evidence, has reason to believe or is satisfied that the assets, proceeds, receipts and benefits, by whatever name called, have arisen or procured by means of corruption by the public servant, it may authorise the confiscation of such assets, proceeds, receipts and benefits till his acquittal.

(2) Where an order of confiscation made under sub-section (1) is modified or annulled by the High Court or where the public servant is acquitted by the Special Court, the assets, proceeds, receipts and benefits, confiscated under sub-section (1) shall be returned to such public servant, and in case it is not possible for any reason to return the assets, proceeds, receipts and benefits, such public servant shall be paid the price thereof including the money so confiscated with the interest at the rate of five per cent. per annum thereon calculated from the date of confiscation.

Power of Lokayukta to recommend transfer or suspension of public servant connected with allegation of corruption.

93. (1) Where the Lokayukta, while making a preliminary inquiry into allegations of corruption, is *prima facie* satisfied, on the basis of evidence available, that—

(a) the continuance of the public servant referred to in clause (d) or clause (e) of sub-section (1) of section 75 in his post while conducting the preliminary inquiry is likely to affect such preliminary inquiry adversely; or

(b) the public servant referred to in clause (a) is likely to destroy or in any way tamper with the evidence or influence witnesses,

then, the Lokayukta may recommend to the State Government for transfer or suspension of such public servant from the post held by him till such period as may be specified in the order.

(2) The State Government shall ordinarily accept the recommendation of the Lokayukta made under sub-section (1), except for the reasons to be recorded in writing in a case where it is not feasible for administrative reasons.

Power of Lokayukta to give directions to prevent destruction of records during preliminary inquiry.

94. The Lokayukta may, in discharge of its functions under this Act, issue appropriate directions to a public servant entrusted with the preparation or custody of any document or record—

(a) to protect such document or record from destruction or damage; or

(b) to prevent the public servant from altering or secreting such document or record; or

(c) to prevent the public servant from transferring or alienating any assets allegedly acquired by him through corrupt means.

Lokayukta to function as appellate authority for appeals arising out of any other law.

95. The Lokayukta shall function as the final appellate authority in respect of appeals arising out of any other law for the time being in force providing for delivery of public services and redressal of public grievances by any public authority in cases where the decision contains findings of corruption under the Prevention of Corruption Act, 1988.

49 of 1988.

Power to delegate.

96. The Lokayukta may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any administrative or financial power conferred on it may also be exercised or discharged by such of its Members or officers or employees as may be specified in the order.

Application of certain provisions relating to Lokpal to apply to Lokayukta.

97. The provisions contained in Chapters IX, X, XI, XII, XIII, XIV and XV (except section 62) shall apply to a Lokayukta and shall have effect, subject to the following modifications, namely:—

(a) references to "President" shall be construed as references to "Governor of the State";

(b) references to the "Central Government" shall be construed as references to "State Government";

(c) references to "each House of Parliament" or "Parliament", shall be construed as references to "Legislature of the State";

(d) references to "Lokpal" shall be construed as references to "Lokayukta";

(e) references to "Comptroller and Auditor-General of India" shall be construed as references to "Accountant General of the State";

(f) references to "Chief Justice of India" shall be construed as references to "Chief Justice of the High Court of the State".

THE SCHEDULE

[See section 58]

AMENDMENT TO CERTAIN ENACTMENTS

PART I

AMENDMENT TO THE COMMISSIONS OF INQUIRY ACT, 1952

(60 OF 1952)

Amendment
of section 3.

In section 3, in sub-section (1), for the words "The appropriate Government may", the words, brackets and figures "Save as otherwise provided in the Lokpal and Lokayuktas Act, 2011, the appropriate Government may" shall be substituted.

PART II

AMENDMENT TO THE DELHI SPECIAL POLICE ESTABLISHMENT ACT, 1946

(25 OF 1946)

Amendment
of section 4A.

1. In section 4A,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The Central Government shall appoint the Director on the recommendation of the Committee consisting of—

(a) the Prime Minister — Chairperson;

(b) the Leader of Opposition in the House of the People — Member;

(c) the Chief Justice of India or Judge of the Supreme Court nominated by him — Member."

(ii) sub-section (2) shall be omitted.

2. In section 4C, for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) The Central Government shall appoint officers to the posts of the level of Superintendent of Police and above except Director, and also recommend the extension or curtailment of the tenure of such officers in the Delhi Special Police Establishment, on the recommendation of a committee consisting of:—

(a) the Central Vigilance Commissioner — Chairperson;

(b) Vigilance Commissioners — Members;

(c) Secretary to the Government of India in charge of the Ministry of Home — Member;

(d) Secretary to the Government of India in charge of the Department of Personnel — Member;

Provided that the Committee shall consult the Director before submitting its recommendation to the Central Government."

PART III

AMENDMENTS TO THE PREVENTION OF CORRUPTION ACT, 1988.

(49 OF 1988)

Amendment
of sections 7,
8, 9 and 12.

1. In sections 7, 8, 9 and section 12,—

(a) for the words "six months", the words "three years" shall respectively be substituted;

(b) for the words "five years", the words "seven years" shall respectively be substituted;

2. In section 13, in sub-section (2), —

Amendment
of section 13.

(a) for the words "one year", the words "four years" shall be substituted;

(b) for the words "seven years", the words "ten years" shall be substituted;

3. In section 14, —

Amendment
of section 14.

(a) for the words "two years", the words "five years" shall be substituted.

(b) for the words "seven years", the words "ten years" shall be substituted.

4. In section 15, for the words "which may extend to three years", the words "which shall not be less than two years but which may extend to five years" shall be substituted.

Amendment
of section 15.

5. In section 19, after the words "except with the previous sanction", the words "save as otherwise provided in the Lokpal and Lokayuktas Act, 2011" shall be inserted.

Amendment
of section 19.

PART IV

AMENDMENT TO THE CODE OF CRIMINAL PROCEDURE, 1973

(2 OF 1974)

In section 197, after the words "except with the previous sanction", the words "save as otherwise provided in the Lokpal and Lokayuktas Act, 2011" shall be inserted.

Amendment
of section 197.

PART V

AMENDMENT TO THE CENTRAL VIGILANCE COMMISSION ACT, 2003

(45 OF 2003)

1. In section 2, after clause (d), the following clause shall be inserted, namely: —

Amendment
of section 2.

'(da) "Lokpal" means the Lokpal established under sub-section (1) of section 3 of the Lokpal and Lokayuktas Act, 2011;"

2. In section 8, in sub-section (2), after clause (b), the following clause shall be inserted, namely: —

Amendment
of section 8.

"(c) on a reference made by the Lokpal under proviso to sub-section (1) of section 20 of the Lokpal and Lokayuktas Act, 2011, the persons referred to in clause (d) of sub-section (1) shall also include—

(i) members of Group B, Group C and Group D services of the Central Government;

(ii) such level of officials or staff of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf.

Provided that till such time a notification is issued under this clause, all officials or staff of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred in clause (d) of sub-section (1)."

Insertion of
new sections
8A and 8B.

3. After section 8, the following sections shall be inserted, namely:—

Action on
preliminary
inquiry in
relation to
public
servants.

"8A. (1) Where, after the conclusion of the preliminary inquiry relating to corruption of public servants belonging to Group C and Group D officials of the Central Government, the findings of the Commission disclose, after giving an opportunity of being heard to the public servant, a *prima facie* violation of conduct rules relating to corruption under the Prevention of Corruption Act, 1988 by such public servant, the Commission shall proceed with one or more of the following actions, namely:—

49 of 1988.

(a) cause an investigation by any agency or the Delhi Special Police Establishment, as the case may be;

(b) initiation of the disciplinary proceedings or any other appropriate action against the concerned public servant by the competent authority;

(c) closure of the proceedings against the public servant and to proceed against the complainant under section 46 of the Lokpal and Lokayuktas Act, 2011.

(2) Every preliminary inquiry referred to in sub-section (1) shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing, within a further period of ninety days from the date of receipt of the complaint.

Action on
investigation
in relation to
public
servants.

8B. (1) In case the Commission decides to proceed to investigate into the complaint under clause (a) of sub-section (1) of section 8A, it shall direct any agency (including the Delhi Special Police Establishment) to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order and submit the investigation report containing its findings to the Commission:

Provided that the Commission may extend the said period by a further period of six months for the reasons to be recorded in writing.

(2) Notwithstanding anything contained in section 173 of the Code of Criminal Procedure, 1973, any agency (including the Delhi Special Police Establishment) shall, in respect of cases referred to it by the Commission, submit the investigation report to the Commission.

2 of 1974.

(3) The Commission shall consider every report received by it under sub-section (2) from any agency (including the Delhi Special Police Establishment) and may decide as to—

(a) file charge-sheet or closure report before the Special Court against the public servant;

(b) initiate the departmental proceedings or any other appropriate action against the concerned public servant by the competent authority."

Insertion of
new section
11A.

4. After section 11, the following section shall be inserted, namely:—

Director of
Inquiry for
making
preliminary
inquiry.

"11A. (1) There shall be a Director of Inquiry, not below the rank of Joint Secretary to the Government of India, who shall be appointed by the Central Government for conducting preliminary inquiries referred to the Commission by the Lokpal.

(2) The Central Government shall provide the Director of Inquiry such officers and employees as may be required for the discharge of his functions under this Act."

STATEMENT OF OBJECTS AND REASONS

The need to have a legislation for Lokpal has been felt for quite sometime. In its interim report on the "Problems of Redressal of Citizens' Grievances" submitted in 1966, the Administrative Reforms Commission, *inter alia*, recommended the setting up of an institution of Lokpal at the Centre. To give effect to this recommendation of the Administrative Reforms Commission, eight Bills on Lokpal were introduced in the Lok Sabha in the past. However, these Bills had lapsed consequent upon the dissolution of the respective Lok Sabha except in the case of 1985 Bill which was subsequently withdrawn after its introduction.

2. In pursuance of the efforts to constitute a mechanism for dealing with complaints on corruption against public functionaries including in high places, the Government constituted a Joint Drafting Committee on 8th April, 2011 to draft a Lokpal Bill. Divergent views emerged during deliberations in the JDC. Government introduced a revised Bill namely 'Lokpal Bill 2011' in the Lok Sabha on 4th August 2011. This Bill was referred to the Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on the 8th August, 2011 for examination and report and this was followed by discussions in both the Houses of Parliament on 27th August 2011. A sense of the House was communicated to the Standing Committee on the basis of discussions in the Houses. The Department Related Parliamentary Standing Committee after extensive discussion with all the concerned Stakeholders suggested major amendments as regards the scope and content of the Bill introduced in August 2011. It also recommended that Lokpal at the centre and Lokayukta at the States be conferred constitutional status in its report of 9th December 2011. Upon consideration of the recommendations of the Standing Committee it was decided to withdraw the Lokpal Bill 2011 pending in Lok Sabha and to introduce a thoroughly revised bill for carrying out the necessary amendments to the Constitution for the setting up of Lokpal and Lokayuktas as constitutional bodies.

3. India is committed to pursue the policy of 'Zero Tolerance against Corruption'. India ratified the United Nations Convention Against Corruption by deposit of Instrument of Ratification on 9th May 2011. This Convention imposes a number of obligations, some mandatory, some recommendatory and some optional on the Member States. The Convention, *inter alia*, envisages that State Parties ensure measures in the domestic law for criminalization of offences relating to bribery and put in place an effective mechanism for its enforcement. The obligations of the Convention, with reference to India, have come into force with effect from 8th June 2011. As a policy of Zero tolerance against Corruption the Bill seeks to establish in the country, a more effective mechanism to receive complaints relating to allegations of corruption against public servants including Ministers, MPs, Chief Ministers, Members of Legislative Assemblies and public servants and to inquire into them and take follow up actions. The bodies, namely, Lokpal and Lokayuktas which are being set up for the purpose will be constitutional bodies. This setting up of these bodies will further strengthen the existing legal and institutional mechanism thereby facilitating a more effective implementation of some of the obligations under the aforesaid Convention.

4. The Lokpal and Lokayuktas Bill 2011, seeks to provide, *inter alia*, for—

(i) setting up the institution of Lokpal for the Union and Lokayuktas for the States through a single Legislation and these bodies will have a constitutional status for which a Constitution (Amendment) Bill is being introduced;

(ii) Lokpal and Lokayukta will consist of a Chairperson and a maximum of eight Members, of which fifty per cent. shall be judicial Members;

(iii) that all categories of persons, who are eligible for selection as Member of Lokpal and Lokayukta are also eligible for selection as Chairperson of the Lokpal;

(iv) that the Selection Committee for selection of Chairperson and Members of Lokpal shall consist of—

- (a) Prime Minister;
- (b) Speaker of Lok Sabha;
- (c) Leader of Opposition in the Lok Sabha;
- (d) Chief Justice of India or a sitting Supreme Court Judge nominated by CJI;
- (e) an eminent jurist to be nominated by the President of India;

In the case of Lokayukta, it will be Chief Minister, speaker, Leader of opposition of the State Legislature, Chief Justice or the judge of High Court and an eminent jurist nominated by the Governor;

(v) fifty per cent. of members of Lokpal and Lokayuktas shall be from amongst Scheduled Castes, Scheduled Tribes, Other Backward Classes, Minorities and Women. Similar reservation is being provided in the Search Committee;

(vi) removal procedure for Lokpal and Lokayuktas and Members in the Bill instead of providing in the Constitution Amendment Bill;

(vii) bringing Prime Minister under the purview of the Lokpal with some subject matter exclusions and specific process for handling complaints against the Prime Minister by providing that Lokpal may not hold any inquiry against the Prime Minister if allegations relate to International relations; External and internal security of the country; public order; Atomic energy, and Space, and further providing that any decision of the Lokpal to initiate preliminary inquiry or investigation against the Prime Minister shall be taken only by the Full Bench with a majority of 3/4th and that such proceedings be held *in camera*;

(viii) inclusion of all categories of employees under Lokpal or Lokayuktas who will receive complaints against Group 'A', 'B', 'C' & 'D' categories of Government servants; decide on holding of preliminary inquiry;

(ix) that Lokpal may refer complaints against specified categories of public servants to Central Vigilance Commission and that Commission shall send its report of preliminary inquiry in respect of Group 'A' and 'B' officers back to Lokpal for further decision and with respect to Group 'C' and 'D' employees, Commission shall take action in exercise of its own powers under the Central Vigilance Commission Act, 2003, subject to reporting and review mechanism by Lokpal over the Central Vigilance Commission;

(x) provision for superintendence of Lokpal over the Delhi Special Police Establishment in so far as the cases referred to them by Lokpal;

(xi) bringing under the jurisdiction of Lokpal and Lokayuktas entities or institutions receiving donations from foreign source in terms of and in the context of the Foreign Contribution Regulation Act, 2010 in excess of Rs. 10 lakhs per year;

(xii) setting up of an Inquiry Wing of the Lokpal and Lokayuktas for conducting the preliminary inquiry and also an independent Prosecution Wing in the Lokpal institution;

(xiii) providing that no prior sanction shall be required for launching prosecution in cases enquired by Lokpal and Lokayuktas or initiated on the direction and with the approval of Lokpal and Lokayuktas and, similarly, no prior approval is required for conducting investigation by the Delhi Special Police Establishment in respect of cases entrusted by Lokpal;

(xiv) as a measure of reinforcing natural justice, a provision enabling inquiring agency to seek comments from the competent authority who after obtaining the comments of the public servant will furnish comments to the inquiring agency within a prescribed timelines. A three member bench will consider the inquiry report and may decide to recommend investigation or initiate disciplinary proceeding or close the case;

(xv) the Bill seeks to amend the Delhi Special Police Establishment Act, 1946 to provide a High Power Selection Committee for selection of Director of the Delhi Special Police Establishment.

5. The notes on clauses explain in details the provisions of the Bill.

6. The Bill seeks to achieve the aforesaid objectives.

V. NARAYANASAMY.

NEW DELHI;
The 21st December, 2011.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF
THE CONSTITUTION OF INDIA

[Copy of letter No. 407/108/2011-AVD.IV dated 21 December, 2011 from Shri V. Narayanasamy, Minister of State in the Ministry of Personnel, Public Grievances and Pensions to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the Lokpal and Lokayukta Bill, 2011, recommends the introduction and consideration of the Lokpal and Lokayukta Bill, 2011 in the Lok Sabha under article 117(1) and 117(3) of the Constitution.

Notes on clauses

Clause 1.— This clause of the Bill seeks to provide for the short title, extent, application and commencement of the proposed Lokpal and Lokayukta legislation. It provides that it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different States and for different provisions of the proposed legislation, and any reference in any provision to the commencement of the proposed legislation shall be construed as a reference to the coming into force of that provision.

Clause 2.— This clause defines the various expressions used in the Bill which, *inter alia*, include the expressions — “Bench”, “Central Vigilance Commission”, “competent authority”, “complaint”, “investigation”, “preliminary inquiry”, “Judicial Member”, “Lokpal”, “Member”, “Minister”, “public servant”, “Special Court”, etc. The court of Special Judge appointed under sub-clause (1) of section 3 of the Prevention of Corruption Act, 1988 shall be the Special Court.

Sub-clause (3) of the aforesaid clause provides that any reference in the proposed legislation to any other Act or provision thereof which is not in force in any area to which the proposed legislation applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such area.

Clause 3.— This clause seeks to provide for the establishment of Lokpal consisting of a Chairperson and eight Members. It also provides that fifty per cent. of the Members shall be Judicial Members. The Chairperson shall be a person who is or has been a Chief Justice of India or is or has been a Judge of the Supreme Court or an eminent person who fulfils the eligibility specified for Members under sub-clause (3). The Judicial Member shall be a person who is or has been a Judge of the Supreme Court or who is or has been a Chief Justice of a High Court. The Members shall be the persons who are of impeccable integrity and outstanding ability and standing having special knowledge and experience of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management. It also provides that not less than fifty per cent. of the Members of the Lokpal, shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women.

It further provides that the Chairperson or a Member of the Lokpal shall not be a Member of Parliament or a Member of a Legislature of any State or Union territory and shall not be a person, convicted of any offence involving moral turpitude; who is less than forty-five years of age, on the date of assuming office as Chairperson or Member; who is a member of any Panchayat or Municipality; who has been removed or dismissed from service of the Union or a State, and shall not hold any office of trust or profit or be connected with any political party or carry on own business or practice any profession. It also provides that the person appointed as Chairperson or a Member before he enters upon his office shall resign from the office of trust or profit held by him or sever his connection with the conduct and management of any business carried on by him or cease to practice if he is practising any profession.

Clause 4.— This clause provides for appointment of Chairperson and other Members and constitution of a Selection Committee for that purpose. The Chairperson and Members shall be appointed after obtaining the recommendations of a Selection Committee consisting of the Prime Minister, the Speaker of the House of the People, the Leader of Opposition in the House of the People, the Chief Justice of India or a Judge of the Supreme Court nominated by him, one eminent jurist nominated by the President. For the purpose of holding the

Chairperson and other Members of the Lokpal and for preparing a panel of persons to be considered for appointment, the Selection Committee may constitute a Search Committee consisting of such persons having special knowledge and expertise in the matters relating to anti-corruption policy, public administration, vigilance, policy making, finance including insurance and banking, law and management or in any other matter which in the opinion of the Selection Committee may be useful for making the selection of a Chairperson and Members of the Lokpal. It further provides that the Selection Committee shall regulate its own procedure in a transparent manner for selecting the Chairperson and Members of the Lokpal.

It also provides that not less than fifty per cent. of the members of the Search Committee shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women. However, the Selection Committee may also consider any person other than the persons recommended by the Search Committee and the Search Committee shall regulate its own procedure in a transparent manner.

Clause 5. — This clause provides that all necessary steps for appointment of a new Chairperson or Members shall be taken by the President at least three months before the expiry of the term of the Chairperson or Member, as the case may be, in accordance with the procedure laid down in the proposed legislation.

Clause 6. — This clause deals with the terms of office of the Chairperson and Members. It provides that the Chairperson and every Member shall be appointed by the President by warrant under his hand and seal and hold office as such for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

Clause 7. — This clause deals with salary, allowances and other conditions of services of Chairperson and Members. It provides that the salary, allowances and other conditions of services of the Chairperson shall be the same as that of a Chief Justice of India. The salary, allowances and other conditions of services of the Members shall be the same as that of a Judge of the Supreme Court. Further, after a person is appointed as a Chairperson or a Member, his conditions of service, allowances and pension payable to him shall not be varied to his disadvantage.

Clause 8. — This clause provides for restriction on employment by Chairperson and Members after ceasing to hold the office. It also provides that the Chairperson and Members of Lokpal shall be ineligible to contest any election of President or Vice-President or Member of either House of Parliament or Member of either House of a State Legislature or Municipality or Panchayat within a period of five years from the date of relinquishing the post. However, a Member shall be eligible to be appointed as a Chairperson if his total tenure as Member and Chairperson does not exceed five years. However, if any Member is appointed as the Chairperson, his term of office shall not be more than five years in aggregate as the Member and the Chairperson.

Clause 9. — This clause seeks to provide that in the event of occurrence of any vacancy in the office of Chairperson, by reason of his death, resignation or otherwise, the President may authorise the senior-most Member to act as the Chairperson until a new Chairperson is appointed to fill the vacancy when a Chairperson is unable to discharge his functions owing to absence or leave or otherwise, the President may authorise the senior-most Member to discharge his functions.

Clause 10. — This clause seeks to provide that the Secretary, other officers and staff of the Lokpal shall be appointed by the Chairperson or the Member or officer of Lokpal as the Chairperson may direct. It provides that there shall be a Secretary to the Lokpal in the rank of Secretary to Government of India, and a Director of Inquiry and Director of Prosecution not below the rank of the Additional Secretary to the Government of India or equivalent, who shall be appointed by the Chairperson from a panel of names sent by the Central Government. The President may make rules that the appointment in respect of any post or posts shall be made after consultation with the Union Public Service Commission.

Clause 11. — This clause provides for setting up of an Inquiry Wing of the Lokpal headed by the Director of Inquiry for the purpose of conducting preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988. It further provides that till such time the Investigation Wing is constituted by the Lokpal, the Central Government will make available the services of its investigation officers and other staff required by the Lokpal. It also provides that for the purposes of assisting the Lokpal in conducting preliminary inquiry under the proposed legislation, the officers of the Inquiry Wing not below the rank of Under Secretary to the Government of India, shall have the same powers as are conferred upon the Lokpal under clause 27.

Clause 12.—This clause seeks to provide that the Lokpal may constitute a Prosecution Wing headed by the Director of Prosecution for the purpose of prosecution of public servants in relation to any complaint by the Lokpal under the proposed legislation. It further provides that the Director of prosecution after having been so directed by the Lokpal, file a case in accordance with the investigation report, before the Special Court and take all necessary steps in respect of the prosecution of public servants in relation to any offence punishable under the Prevention of Corruption Act, 1988. It further provides that the case filed by the Director of Prosecution before the Special Court shall be deemed to be a report, filed on completion of investigation, referred to in section 173 of the Code of Criminal Procedure, 1973.

Clause 13. —This clause lays down that the administrative expenses of the Lokpal including salaries, allowances and pensions payable to or in respect of Chairperson, Members, Secretary or other officers or staff of the Lokpal shall be charged upon the Consolidated Fund of India. It also provides that any fees or other moneys taken by the Lokpal shall form part of the Consolidated Fund of India.

Clause 14. — This clause deals with the jurisdiction of Lokpal to include Prime Minister, Ministers, Members of Parliament, Groups A, B, C and D officers and officials of Central Government. Sub-clause (1) seeks to provide that the Lokpal shall inquire or cause an inquiry to be conducted into any matter involved in or arising from or connected with any allegation of corruption made in a complaint in respect of any person who is or has been a Prime Minister. However, the Lokpal shall not inquire into any matter involved in, or arising from, or connected with, any such allegation of corruption against the Prime Minister, in so far as it relates to foreign affairs, international relations, external and internal security, public order, atomic energy and space; unless a full bench of the Lokpal considers the initiation of inquiry and at least three-fourth of its Members approves such inquiry; and unless the inquiry, if any, considered necessary by the Lokpal is held *in camera*.

It further provides that in the case of a Minister, a Member of either House of Parliament, any Group 'A' or Group 'B' officer or equivalent or above, any Group 'C' and Group 'D' official or equivalent or above from against the public servants as defined in sub-clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 who was serving or has served in connection with the affairs of the Union, and Chairperson or Member or officers of certain boards, corporations, authority, company, society, trust, etc. established by an Act of Parliament or wholly or partly financed or controlled by the Central Government; director, manager, secretary or other officers of certain societies, association of persons etc. and director, manager, secretary or other officer of every other society, etc. wholly or partly financed or aided by the Government and the annual income of which exceeds such amount as may be notified by the Central Government or from any foreign source under the Foreign Contribution (Regulation) Act, 2010 in excess of ten lakh rupees in a year or such higher amount as the Central Government may by notification specify. It also provides that any entity or institution, by whatever name called, corporate, society, trust, association of persons, partnership, sole proprietorship, limited liability partnership (whether registered under any law for the time being in force or not), shall be the entities covered in the items (f) and (g).

Sub-clause (2) provides that the Lokpal shall not inquire into any matter against any member of either House of Parliament in respect of anything said or vote given by him in Parliament or any Committee thereof covered under the provisions of clause (2) of article 105 of the Constitution.

Sub-clause (3) provides that the Lokpal may inquire into any act or conduct of any person if such person is involved in the act of abetting, bribe giving or bribe taking or conspiracy relating to any allegation of corruption under the Prevention of Corruption Act, 1988.

Sub-clause (4) seeks to provide that in the matters in respect of which a complaint has been made under the proposed enactment shall not be referred for inquiry under the Commissions of Inquiry Act, 1952. The *Explanation* therein clarifies that a complaint under the proposed legislation shall relate only to a period during which the public servant was holding or serving as a public servant.

Clause 15. — This clause lays down that matters pending before any Court or Committee or Authority prior to commencement of the proposed legislation shall be continued before such Court, Committee or Authority, as the case may be.

Clause 16. — This clause seeks to provide that the jurisdiction of the Lokpal may be exercised by Benches thereof. A Bench of the Lokpal may be constituted by the Chairperson with two or more Members. Every Bench shall ordinarily consist of at least one Judicial Member in it. The Benches of Lokpal shall ordinarily be at New Delhi and at such places as the Lokpal may, by regulations, specify.

Clause 17. — This clause seeks to empower the Chairperson to distribute the business of Lokpal amongst its Benches and also specify the matters which may be dealt with by each Bench.

Clause 18. — This clause seeks to provide that the Chairperson may transfer any case pending before one Bench for disposal to any other Bench on receipt of an application for such transfer from the complainant or the public servant.

Clause 19. — This clause seeks to provide that the decision of the Lokpal shall be according to the opinion of the majority of the Members of Lokpal. However, if the Members of a Bench consisting of two Members differ in opinion on any point or points shall be referred to the Chairperson. The Chairperson may either hear such point or points himself or refer the same for hearing by one or more other Member and it shall be decided accordingly to the opinion of the majority of the Members who have heard the case including those who first heard it.

Clause 20. — This clause makes provision relating to complaint and preliminary inquiry and investigation by Lokpal. It provides that the Lokpal shall, on receipt of a complaint first decide whether to proceed in the matter or close the same and if the Lokpal decides to proceed further it shall order the preliminary inquiry by its Inquiry Wing or any agency (including Delhi Special Police Establishment) to ascertain whether there exists a *prima facie* case for proceeding in the matter. However, the Lokpal shall if decides to proceed further with the preliminary inquiry, by a general or special order, refer the complaints or a category of complaints or a complaint received by it in respect of public servants belonging to Group A or Group B or Group C or Group D to the Central Vigilance Commission constituted under sub-section (1) of section 3 of the Central Vigilance Commission Act, 2003. It further provides that the Central Vigilance Commission in respect of complaints referred to it, after making preliminary inquiry in respect of public servants belonging to Group A and Group B, shall submit its report to the Lokpal in accordance with the provisions contained in sub-clauses (2) and (4) and in case of public servants belonging to Group C and D, the Commission shall proceed in accordance the provisions of the Central Vigilance Commission Act, 2003.

Sub-clause (2) provides that during the preliminary inquiry, the Inquiry Wing or any agency (including Delhi Special Police Establishment) shall conduct a preliminary inquiry and on the basis of material, information and documents collected seek the comments on the allegations made in the complaint from the public servant and competent authority and after obtaining the comments of the concerned public servant and competent authority, submit, within sixty days from the date of receipt of the reference, a report to the Lokpal.

Sub-clause (3) provides that a bench consisting of not less than three Members of the Lokpal shall consider every such report received from the Inquiry Wing, and decide as to whether there exists a *prima facie* case, and make recommendations to proceed with investigation by any investigating agency or the Delhi Special Police Establishment, as the case may be; after giving an opportunity of being heard to the public servant, with initiation of the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority; or with closure of the proceedings against the public servant and take action to proceed against the complainant under clause 46.

Sub-clause (4) seeks to provide that every preliminary inquiry referred to Lokpal shall ordinarily be completed within a period of ninety days and for reasons to be recorded in writing within a further period of ninety days from the date of receipt of the complaint and in case the Lokpal decides to proceed to investigate into the complaint, it shall direct any agency including the Delhi Special Police Establishment to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order and submit the investigation report containing its findings to the Lokpal. However, after recording the reasons the Lokpal can extend the said period by a further period of six months and a bench consisting of not less than three Members of the Lokpal shall consider every report received by it from any agency (including the Delhi Special Police Establishment), decide as to file charge-sheet or closure report before the Special Court against the public servant; or to initiate the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority.

It also provides that the Lokpal may, after taking a decision on the filing of the charge-sheet direct, its Prosecution Wing to initiate prosecution in the Special Court in respect of the cases investigated by any agency (including the Delhi Special Police Establishment) in respect of the cases investigated by such agency on the direction of Lokpal to obtain its approval and thereafter initiate prosecution in the Special Court and forward a copy of charge-sheet filed by it under this clause to the Lokpal for the purposes of superintendence.

Clause 21. — This clause provides that persons likely to be prejudicially affected are to be provided a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence consistent with the principles of natural justice. However, this will not apply where the credibility of a witness is being questioned.

Clause 22. — This clause seeks to provide that Lokpal may require any public servant or any other person to furnish information or produce documents relevant to inquiry or investigation.

Clause 23. — This clause makes provision that no sanction or approval of any authority shall be required by the Lokpal or its Investigation Wing, in respect of the cases investigated by its Investigation Wing; or any agency (including the Delhi Special Police Establishment) in respect of the cases investigated by such agency on the direction of Lokpal, under section 197 of the Code of Criminal Procedure, 1973 or section 19 of the Prevention of Corruption, Act, 1988 for the purpose of making preliminary inquiry by the Lokpal or its Inquiry Wing or investigation by Investigation Wing or any agency including the Delhi Special Police Establishment into any complaint against any public servant or for filing of any charge sheet or closure report on completion of investigation in respect thereof before the Special Court under the proposed legislation. However, for the purpose of making preliminary inquiry by the Lokpal or its Inquiry Wing or investigation by its Investigation Wing or any agency including the Delhi Special Police Establishment no decision shall be

required by the department concerned in this regard. It is also clarified that no sanction or approval shall be required in respect of all cases falling under clause (a) or clause (b).

Clause 24. — This clause makes provision for action to be taken by the Lokpal on conclusion of investigation against public servants being Ministers or Members of Parliament. It provides that where the commission of offence under Prevention of Corruption Act, 1988 by such public servants has taken place, the Lokpal may file a case in the Special Court and send a copy of the report along with its findings to the competent authority as defined in the proposed legislation. It also provides that the competent authority shall examine or cause to be examined the report and communicate or cause to be communicated to the Lokpal within a period of ninety days from the date of receipt of the report, the action taken or proposed to be taken on the basis of the report and the reasons for not taking any action on the recommendation of the Lokpal. However, in computing the period of ninety days, the period during which the Parliament will not be in session shall be excluded.

Clause 25. — This clause seeks to empower the Lokpal with supervisory powers. It provides that the Lokpal shall, notwithstanding anything contained in section 4 of the Delhi Special Police Establishment Act, 1946 and section 8 of the Central Vigilance Commission Act, 2003, have the powers of superintendence and direction, over the Delhi Special Police Establishment in respect of the matters in so far as they relate to the investigation by the Delhi Special Police Establishment under the proposed legislation.

Clause 26. — This clause seeks to confer power of search and seizure of documents on the Lokpal.

Clause 27. — This clause provides that the Lokpal shall have all the powers of a Civil Court in certain matters and the proceedings before the Lokpal shall be deemed to be judicial proceedings within the meaning of section 193 of the Indian Penal Code.

Clause 28. — This clause seeks to make provision that the Lokpal may utilise the services of any officer or organisation or investigating agency of the Central Government or the State Government, as the case may be. It also enables the Lokpal to confer certain powers on such officers or organisation or agency.

Clause 29. — This clause makes provision for provisional attachment of assets by the Lokpal or any officer authorised by it if such assets are any proceeds of corruption.

Clause 30. — This clause makes provision for confirmation of provisional attachment of assets made by the Lokpal under clause 29 by the Special Court.

Clause 31. — This clause makes provision for Confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances. It provides that the Special Court, on the basis of prima facie evidence, has reason to believe or is satisfied that the assets, proceeds, receipts and benefits have arisen or procured by means of corruption by the public servant, then it may authorise the confiscation of such assets, proceeds, receipts and benefits till his acquittal. It further provides that in case the order of confiscation is modified or annulled by the High Court or where the public servant is acquitted by the Special Court, the assets, proceeds, receipts and benefits, confiscated shall be returned to him, and in case it is not possible for any reason to return the assets, proceeds, receipts and benefits, he shall be paid the price thereof including the money so confiscated with the interest at the rate of five per cent. per annum calculated from the date of confiscation.

Clause 32. — This clause seeks to provide that the Lokpal may recommend transfer or suspension of any public servant connected with allegation of corruption. This clause also provides that ordinarily the recommendation of the Lokpal shall be accepted by the Government.

Clause 33. — This clause seeks to provide that the Lokpal may give directions to prevent destruction of records during inquiry.

Clause 34.—This clause provides that the Lokpal may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any administrative or financial power conferred on it may also be exercised or discharged by such of its Members or officers or employees as may be specified in the order.

Clause 35.—This clause provides for constitution of Special Courts by the Central Government as recommended by the Lokpal to hear and decide the cases arising out of the Prevention of Corruption Act, 1988 or under the proposed legislation. It also provides that the Special Courts shall ensure completion of each trial within a period of one year from the date of filing the case in the court. However, in case the trial cannot be completed within a period of one year, the Special Court shall record reasons therefor and complete the trial within a further period of not more than three months or such further periods not exceeding three months each, for reasons to be recorded in writing, before the end of each such three month period, but not exceeding a total period of two years.

Clause 36.— This clause makes provision for issue of letter of request to a court or an authority in the contracting state in certain cases.

Clause 37.—This clause makes provisions for handling of complaints against the Chairperson and Members of the Lokpal. It provides that the Lokpal shall not inquire into any complaint made against the Chairperson or any Member. The Chairperson or any Member shall be removed from his office by order of the President on grounds of misbehaviour after the Supreme Court, on a reference being made to it, by the President, or by the President on a petition being signed by at least one hundred Members of Parliament, or by the President on receipt of a petition made by a citizen of India and where the President is satisfied that the petition should be referred, has, on an inquiry held in accordance with the procedure prescribed in that behalf, reported that the Chairperson or such Member, as the case may be, ought to be removed on such ground and the President may suspend from office the Chairperson or any Member in respect of whom a reference has been made to the Supreme Court until the President has passed orders on receipt of the report of the Supreme Court on such reference.

It further provides that notwithstanding anything contained in sub-clause (2), the President may, by order, remove from the office the Chairperson or any Member if the Chairperson or such Member, as the case may be, is adjudged an insolvent; or engages, during his term of office, in any paid employment outside the duties of his office; or is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body. It also provides that if the Chairperson or any Member is, or becomes, in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, be deemed to be guilty of misbehaviour.

Clause 38.— This clause seeks to provide for the provisions for the complaints against officials of Lokpal.

Clause 39.— This clause provides that when a public servant has committed an offence under the Prevention of Corruption Act, 1988, the Special Court may make an assessment of loss, if any, caused to the public exchequer on account of actions or decisions of such public servant not taken in good faith and for which he stands convicted, and order recovery of such losses.

Clause 40.— This clause seeks to provide that the Lokpal shall prepare its budget showing the estimated receipts and expenditure of the Lokpal and forward the same to the Central Government for intervention.

Clause 41.— This clause provides that without prejudice to the provisions of clause 16, the Central Government may make grants of such sums of money to the Lokpal as

are required to be paid for salaries and allowances payable to the Chairperson and Members and the administrative expenses, including the salaries and allowances and pension payable to or in respect of officers and other employees of the Lokpal.

Clause 42. — This clause provides for maintaining the accounts and other relevant records and annual statement of accounts by the Lokpal. It also provides that the accounts of Lokpal together with the Audit Report thereon shall be forwarded annually to the Central Government and the Central Government shall lay the same before each House of the Parliament.

Clause 43. — This clause provides that the Lokpal shall furnish to the Central Government such returns or statements and such particulars with regard to any matter under the jurisdiction of Lokpal as the Central Government may prescribe from time to time.

Clause 44. — This clause provides that the public servants shall make a declaration of their assets and liabilities in the manner as provided in this Bill.

Clause 45. — This clause provides that any willful failure on the part of a public servant to declare his assets shall amount to presumption that the assets have been acquired by corrupt means.

Clause 46. — This clause provides that if any person makes false or frivolous or vexatious complaint under this Bill, he shall be liable for prosecution and on conviction he may be punished with imprisonment for a term which may extend to one year and with fine which may extend to one lakh rupees. However, there would not be any punishment in case of complaints made in good faith.

Clause 47. — This clause provides that if false complaint is made by the Society or association of persons or trust, in that case every person who, at the time of commission of offence, was directly in-charge of the affairs or activities of such society, etc., shall be deemed to be guilty of the offence under clause 53 and liable for punishment.

Clause 48. — This clause provides for the Lokpal to present annually a report to the President as to the work done by it and on receipt of such report the President shall cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Lokpal was not accepted, the reason for such non-acceptance to be laid before each House of Parliament.

Clause 49. — This clause seeks to empower the Lokpal to function as appellate authority for appeals arising out of any other law for the time being in force. It provides the Lokpal to function as the final appellate authority in respect of appeals arising out of any other law for the time being in force providing for public services in cases where the decision contains findings of corruption under the Prevention of Corruption Act, 1988.

Clause 50. — This clause provides for protection of public servant from legal proceedings, etc., for the action taken in good faith.

Clause 51. — This clause provides for the protection of action taken in good faith by Lokpal, any officer, employee, agency or any person in respect of anything done or intended to be done under the proposed legislation or the rules or regulations made thereunder.

Clause 52. — This clause provides that the Chairperson, Members, officers and other employees of the Lokpal shall be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 53. — This clause lays down the period of limitation for filing of complaints before the Lokpal as seven years from the date of commission of the alleged offence.

Clause 54. — This clause provides that no civil court shall have jurisdiction in the matters for which Lokpal is empowered under the proposed legislation.

Clause 55. — This clause provides that legal assistance for defending a case before the Lokpal shall be provided to every person against whom complaint has been made before it, if such assistance is requested for.

Clause 56. — This clause seeks to provide that the provisions of the proposed legislation shall have overriding effect.

Clause 57. — This clause provides that the provisions of the proposed legislation shall be in addition to any other law for the time being in force.

Clause 58. — This clause seeks to amend certain enactments as specified in the Schedule to the proposed legislation.

Clause 59. — This clause seeks to empower the Central Government to make rules for carrying out the provisions of the proposed legislation. Sub-clause (2) of the said clause enumerates the various matters in respect of which such rules may be made.

Clause 60. — This clause seeks to confer power on the Lokpal to make regulations for carrying out the provisions of the proposed legislation consistent with the provisions of the proposed legislation and the rules made by the Central Government under clause 59. Sub-clause (2) enumerates the various matters in respect of which such regulations may be made.

Clause 61. — This clause provides that every rule and every regulation made under the proposed legislation shall be laid before each House of Parliament.

Clause 62. — This clause relates to the power of the Central Government to remove difficulties. In case any difficulty arises in giving effect to the provisions of the proposed legislation, the Central Government may make such provisions as may be necessary in removing the difficulties by order published in the Official Gazette. However, no such order shall be made under this clause after the expiry of a period of two years from the commencement of the proposed legislation and every such order shall also be required to be laid before each House of Parliament.

Clause 63. — This clause defines the various expressions used in the Bill in respect of the provisions relating to the Lokayukta for States which, *inter alia*, include the expressions — “Bench”, “competent authority”, “Investigation”, “preliminary inquiry”, “Lokayukta”, “Member”, “Minister”, etc.

Clause 64. — This clause seeks to provide for the establishment of Lokayukta consisting of a Chairperson and eight Members. It also provides that fifty per cent. of the Members shall be judicial Members. The Chairperson shall be a person who is or has been a Chief Justice of High Court or a retired Judge of the High Court or an eminent person. The judicial Member shall be a person who is or has been a Judge of the High Court. The Members shall be the persons who are of impeccable integrity, outstanding ability and having special knowledge and experience of not less than twenty-five years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management. It further provides that not less than fifty per cent. of the Members of the Lokayukta shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women. It further provides that the Chairperson or a Member of the Lokayukta shall not be a Member of Parliament or a Member of a Legislature of any State or Union territory and shall not be a person convicted of any offence involving moral turpitude and shall not be a person of less than forty-five years of age, on the date of assuming office as Chairperson or Member, as the case may be, a person who has been removed or dismissed from service of the Union or a State, and shall not hold any office of trust or profit or be connected with any political party or carry on own business or practice any profession.

It further provides that the person appointed as Chairperson or a Member before he enters upon his office shall resign from the office of trust or profit held by him or sever his

connection with the conduct and management of any business carried on by him or cease to practice if he is practicing any profession.

It also provides that the Lokayukta or State Lokpal (by whatever name called) constituted under any State law for the time being in force, before the commencement of the proposed legislation, and applicable in that State, shall continue to discharge their function and exercise powers conferred upon them under that law in respect of that State until such law is amended or repealed by the State Legislature so as to bring in conformity with the proposed legislation.

Clause 65.— This clause provides for appointment of Chairperson and other Members and constitution of a Selection Committee for that purpose. The Chairperson and Members shall be appointed after obtaining the recommendations of a Selection Committee consisting of the Chief Minister, the Speaker of the Legislative Assembly, the Leader of Opposition in the Legislative Assembly, the Chief Justice of the High Court of the State or a Judge of the High Court nominated by him and one eminent jurist nominated by the Governor. For the purpose of holding the Chairperson and other Members of the Lokayukta and for preparing a panel of persons to be considered for appointment, the Selection Committee may constitute a Search Committee consisting of such persons of standing having special knowledge and expertise in the matters relating to anti-corruption policy, public administration, vigilance, policy making, finance including insurance and banking, law and management or in any other matter which in the opinion of the Selection Committee may be useful for making the selection of a Chairperson and Members of the Lokayukta. It further provides that not less than fifty per cent. of the members of the Search Committee shall be from amongst the persons belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes, Minorities and women and the Selection Committee may also consider any person other than the persons recommended by the Search Committee and the Selection Committee shall regulate its own procedure in a transparent manner for selecting the Chairperson and Members of the Lokayukta.

Clause 66.— This clause provides that all necessary steps for appointment of a new Chairperson or Members shall be taken at least three months before the expiry of the term of such Chairperson or Member, as the case may be, in accordance with the procedure laid down in the proposed legislation.

Clause 67.— This clause deals with the terms of office of the Chairperson and Members. It provides that the Chairperson and every Member shall be appointed by the Governor by warrant under his hand and seal and hold office as such for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

Clause 68.— This clause deals with salary, allowances and other conditions of services of Chairperson and Members. It provides that the salary, allowances and other conditions of services of the Chairperson shall be the same as that of a Chief Justice of the High Court. The salary, allowances and other conditions of services of the Members shall be the same as that of a Judges of the High Court. Further, after a person is appointed as a Chairperson or a Member, his conditions of service, allowances and pension payable to him shall not be varied to his disadvantage.

Clause 69.— This clause provides for restriction on employment by Chairperson and Members after ceasing to hold the office. It also provides that the Chairperson and Members of Lokayukta shall be ineligible to contest any election of Governor or Lieutenant-Governor or Member of either House of Parliament or Member of either House of a State Legislature or Municipality or Panchayat within a period of five years from the date of relinquishing the post. However, a Member shall be eligible to be appointed as a Chairperson if his total tenure as Member and Chairperson does not exceed five years. However it is clarified that where the Member is appointed as the Chairperson, his term of office shall not be more than five years in aggregate as the Member and the Chairperson.

Clause 70. — This clause seeks to provide that in the event of occurrence of any vacancy in the office of Chairperson, by reason of his death, resignation or otherwise, the Governor may authorise the senior-most Member to act as the Chairperson until a new Chairperson is appointed to fill the vacancy when a Chairperson is unable to discharge his functions owing to absence or leave or otherwise, the Governor may authorise the senior-most Member to discharge his functions.

Clause 71. — This clause seeks to provide that the secretary or other officers and staff of the Lokayukta shall be appointed by the Chairperson or the Member or officer of Lokayukta as the Chairperson may direct. It provides that there shall be a Secretary to the Lokpal in the rank of Secretary to Government of India, and a Director of Inquiry and Director of Prosecution not below the rank of the Additional Secretary to the Government of India or equivalent, who shall be appointed by the Chairperson from a panel of names sent by the Central Government. The Governor may make rules that the appointment in respect of any post or posts shall be made after consultation with the State Public Service Commission.

Clause 72. — This clause provides for setting up of an Inquiry Wing of the Lokayukta headed by the Director of Inquiry for the purpose of conducting preliminary inquiry of any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988. It further provides that till such time the Inquiry Wing is constituted by the Lokayukta, the State Government will make available the services of its inquiry officers and other staff required by the Lokayukta. It also provides that for the purposes of assisting the Lokayukta in conducting preliminary inquiry under the proposed legislation, the officers of the Inquiry Wing not below the rank of Under Secretary to the State Government, shall have the same powers as are conferred upon the Lokayukta under clause 88.

Clause 73. — This clause seeks to provide that the Lokayukta may constitute a Prosecution Wing headed by a Director of Prosecution with such other officers and employees as required to assist him for the purpose of prosecution of public servants in relation to offences punishable under the Prevention of Corruption Act, 1988, and such prosecution on the directions of the Lokayukta shall file a case in accordance with the investigation report, before the Special Court. It further provides that the report, on the directions of the Lokayukta, filed by the Director of Prosecution before the Special Court shall be deemed to be a report, filed on completion of investigation, referred to in section 173 of the Code of Criminal Procedure, 1973.

Clause 74. — This clause lays down that the administrative expenses of the Lokayukta including salaries, allowances and pensions payable to or in respect of Chairperson, Members, Secretary or other officers or staff of the Lokayukta shall be charged upon the Consolidated Fund of the State. It also provides that any fees or other moneys taken by the Lokayukta shall form part of the Consolidated Fund of that State.

Clause 75. — This clause deals with the jurisdiction of Lokayukta. Sub-clause (1) seeks to provide that the Lokayukta shall inquire or cause an inquiry to be conducted into any matter involved in or arising from or connected with any allegation of corruption made in a complaint in respect of any person who is or has been a Chief Minister. It further provides that in the case of a Minister, any person who is or has been a Member of the State Legislature, all officers and employees of the State from against the public servants as defined in sub-clauses (i) and (ii) of clause (c) of section 2 of the Prevention of Corruption Act, 1988 who was serving or has served in connection with the affairs of the State, and Chairperson or Member or officers of certain boards, corporations, authority, company, society, trust, etc., established by an Act of Parliament or of a state legislature or wholly or partly financed or controlled by the State Government; director, manager, secretary or other officers of certain societies, association of persons, etc., and director, manager, secretary or other officer of every other society, etc., wholly or partly financed or aided by the Government and the annual income of which exceeds such amount as may be notified by the State

Government or from any foreign source under the Foreign Contribution (Regulation) Act, 2010 in excess of ten lakh rupees in a year or such higher amount as the Central Government may by notification specify. It also provides that any entity or institution, by whatever name called, corporate, society, trust, association of persons, partnership, sole proprietorship, limited liability partnership (whether registered under any law for the time being in force or not), shall be the entities covered in the items (f) and (g).

Sub-clause (2) provides that the Lokayukta shall not inquire into any matter against any member of the State Legislature in respect of anything said or vote given by him in the State Legislature or any Committee thereof covered under the provisions of clause (2) of article 194 of the Constitution.

Sub-clause (3) provides that the Lokayukta may inquire into any act or conduct of any person if such person is involved in the act of abetting, bribe giving or bribe taking or conspiracy relating to any allegation of corruption under the Prevention of Corruption Act, 1988.

Sub-clause (4) seeks to provide that in the matters in respect of which a complaint has been made under the proposed legislation shall not be referred for inquiry under the Commissions of Inquiry Act, 1952. The *Explanation* clarifies that a complaint under the proposed legislation shall relate only to a period during which the public servant was holding or serving as a public servant.

Clause 76. — This clause lays down that matters pending before any Court or Committee or Authority prior to commencement of the proposed legislation shall be continued before such Court, Committee or Authority, as the case may be.

Clause 77. — This clause seeks to provide that the jurisdiction of the Lokayukta may be exercised by Benches thereof. A Bench of the Lokayukta may be constituted by the Chairperson with two or more Members. Every Bench shall ordinarily consist of at least one Judicial Member in it. The Benches of Lokayukta shall ordinarily be at capital of the State and at such other places as the Lokayukta may, by regulations, specify.

Clause 78. — This clause seeks to empower the Chairperson to distribute the business of Lokayukta amongst its Benches and also specify the matters which may be dealt with by each Bench.

Clause 79. — This clause seeks to provide that the Chairperson may transfer any case pending before one Bench for disposal to any other Bench on receipt of an application for such transfer from the complainant or the public servant.

Clause 80. — This clause seeks to provide that the decision of the Lokayukta shall be according to the opinion of the majority of the Members of Lokayukta. However, if the Members of a Bench consisting of two Members differ in opinion on any point or points shall be referred to the Chairperson. The Chairperson may either hear such point or points himself or refer the same for hearing by one or more other Member and it shall be decided accordingly to the opinion of the majority of the Members who have heard the case including those who first heard it.

Clause 81. — This clause makes provision relating to complaint and preliminary inquiry and investigation by Lokayukta. It provides that the Lokayukta may, on receipt of a complaint first decide whether to proceed in the matter or close the same and if the Lokayukta decides to proceed further it shall order the preliminary inquiry by its Inquiry Wing or any agency (including any special investigation agency) to ascertain whether there exists a *prima facie* case for proceeding in the matter. It further provides that during the preliminary inquiry the Inquiry Wing or any agency shall conduct a preliminary inquiry and on the basis of material, information and documents collected seek the comments on the allegations made in the complaint from the competent authority received from the public servant, within sixty days from the date of receipt of the reference and after obtaining the comments from the competent authority shall report to the Lokayukta.

It further provides that a bench consisting of not less than three Members of the Lokayukta shall consider every such report received from the Inquiry Wing or any agency and after giving an opportunity of being heard to the public servant decide as to whether there exists a *prima facie* case, and make recommendations to proceed with investigation by any investigating agency; or with initiation of the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority; or with closure of the proceedings against the public servant and take action to proceed against the complainant.

It also seeks to provide that in case the Lokayukta decides to proceed to investigate into the complaint, it shall direct its any other agency to carry out the investigation as expeditiously as possible and complete the investigation within a period of six months from the date of its order and submit the investigation report containing its findings to the Lokayukta. However, after recording the reasons the Lokayukta can extend the said period by a further period of six months and a bench consisting of not less than three Members of the Lokayukta shall consider every report received by it from the any other agency may, after giving an opportunity of being heard to the public servant, decide as to file charge-sheet or closure report before the Special Court against the public servant; or to initiate the departmental proceedings or any other appropriate action against the concerned public servants by the competent authority.

It also provides that the Lokayukta shall direct, its Prosecution Wing to initiate prosecution in the Special Court in respect of the cases investigated by any other agency in respect of the cases investigated by such agency on the direction of Lokayukta to obtain its approval and thereafter initiate prosecution in the Special Court and forward a copy of charge-sheet filed by it under this clause to the Lokayukta for the purposes of superintendence and the Lokayukta shall retain the original records and evidences, which are likely to be required in the process of preliminary inquiry or investigation or conduct of a case by it or by the Special Court.

Clause 82. — This clause seeks to provide that the persons against whom any preliminary inquiry or investigation is proposed to be conducted shall be allowed to inspect any record in connection with the commission of any alleged offence which are necessary for him to defend his case and take extracts therefrom.

Clause 83. — This clause provides that persons likely to be prejudicially affected are to be provided a reasonable opportunity of being heard in the inquiry and to produce evidence in his defence consistent with the principles of natural justice.

Clause 84. — This clause makes provision that no sanction or approval of any authority shall be required by the Lokayukta or in respect of the cases investigated by or any agency in respect of the cases investigated by such agency on the direction of Lokayukta, under section 197 of the Code of Criminal Procedure, 1973 or section 19 of the Prevention of Corruption, Act, 1988 for the purpose of making preliminary inquiry by the Lokayukta or its Inquiry Wing or investigation into any complaint against any public servant or for filing of any charge sheet or closure report on completion of investigation in respect thereof before the Special Court under the proposed legislation.

Clause 85. — This clause seeks to provide for action on inquiry against public servant being Chief Minister, Ministers or Members of State Legislature. It provides that where the commission of offence under Prevention of Corruption Act, 1988 by such public servants has taken place, the Lokayukta may file a case in the Special Court and send a copy of the report along with its findings to the competent authority as defined in the proposed legislation. It also provides that the competent authority shall examine the report and communicate to the Lokayukta within a period of ninety days from the date of receipt of the report, the action taken or proposed to be taken on the basis of the report and the reasons for not taking any action on the recommendation of the Lokayukta. However, in computing the period of ninety days, the period during which the State Legislative is not in session shall be excluded.

Clause 86.— This clause seeks to empower the Lokayukta with supervisory powers. It provides that the Lokayukta shall, notwithstanding anything contained in any law for the time being in force, have the powers of superintendence and direction, over the investigation agency in respect of the matters in so far as they relate to the investigation by such agency under the proposed legislation.

Clause 87.— This clause seeks to confer power of search and seizure of documents on the Lokayukta.

Clause 88.— This clause provides that the Lokayukta shall have all the powers of a Civil Court in certain matters and the proceedings before the Lokayukta shall be deemed to be judicial proceedings within the meaning of section 193 of the Indian Penal Code.

Clause 89.— This clause seeks to make provision that the Lokayukta may utilise the services of any officer or organisation or investigating agency of the State Government. It also enables the Lokayukta to confer certain powers on such officers or organisation or investigating agency.

Clause 90.— This clause makes provision for provisional attachment of assets by the Lokayukta or any investigation officer authorised by it if such assets are proceeds of corruption.

Clause 91.— This clause makes provision for confirmation of provisional attachment of assets made by the Lokayukta under clause 90 by the Special Court.

Clause 92.— This clause makes provision for Confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances. It provides that the Special Court, on the basis of *prima facie* evidence, has reason to believe or is satisfied that the assets, proceeds, receipts and benefits have arisen or procured by means of corruption by the public servant, then it may authorise the confiscation of such assets, proceeds, receipts and benefits till his acquittal. It further provides that in case the order of confiscation is modified or annulled by the High Court or where the public servant is acquitted by the Special Court, the assets, proceeds, receipts and benefits, confiscated shall be returned to him, and in case it is not possible for any reason to return the assets, proceeds, receipts and benefits, he shall be paid the price thereof including the money so confiscated with the interest at the rate of five per cent. per annum calculated from the date of confiscation.

Clause 93.— This clause seeks to provide that the Lokayukta may recommend transfer or suspension of any public servant connected with allegation of corruption. This clause also provides that ordinarily the recommendation of the Lokayukta shall be accepted by the Government.

Clause 94.— This clause seeks to provide that the Lokayukta may give directions to prevent destruction of records during inquiry.

Clause 95.— This clause seeks empower the Lokayukta to function as the appellate authority in respect of appeals arising out of any other law for the time being in force providing for public service and redressal of public grievances by any public authority.

Clause 96.— This clause provides that the Lokayukta may, by general or special order in writing, and subject to such conditions and limitations as may be specified therein, direct that any administrative or financial power conferred on it may also be exercised or discharged by such of its Members or officers or employees as may be specified in the order.

Clause 97.— This clause seeks to provide for application of certain provisions relating to Lokpal to apply to Lokayukata. It provides that the provisions contained in Chapters IX, X, XI, XII, XIII, XIV and XV (except section 59) shall apply to a Lokayukta and shall have effect, with the modifications, relating to any references to “President” shall be construed as references to “Governor of the State”; “Central Government” as “State Government”; “each House of Parliament” or “Parliament”, as “Legislature of the State”; “Lokpal” as

“Lokayukta”; “Comptroller and Auditor-General of India” as “Accountant General of the State” and references to “Chief Justice of India” shall be construed as references to “Chief Justice of the High Court of the State”.

The Schedule to the proposed legislation contains the details of amendments in certain enactments which are consequential to the enactment of the proposed legislation.

FINANCIAL MEMORANDUM

Sub-clause (1) of clause 3 of the Bill provides for the establishment of a body to be called the Lokpal for the purpose of making inquiries in respect of complaints as may be made under the proposed legislation.

2. Sub-clause (2) of clause 3 provides for the appointment of the Lokpal consisting of a Chairperson and eight Members. Clause 7 of the Bill envisages that the salary, allowances and other conditions of service of, the Chairperson of the Lokpal shall be the same as those of the Chief Justice of India and the Members as those of the Judges of the Supreme Court. This Clause also provides that the salary payable to the Chairperson and Members shall be reduced by any pension and pension equivalent to other pensionary benefits to which the Member may be entitled to in respect of any previous service under the Government of India or under the Government of a State.

3. Clause 10 of the Bill provides for the appointment of a Secretary, Director of Inquiry and Director of Prosecution and Officers and other staff for the Lokpal. Sub-clause (4) of the said clause provides that the conditions of service of Secretary and other officers and staff of the Lokpal shall be such as may be specified by regulations made by the Lokpal for the purpose.

4. Sub-clause (1) of clause 11 provides that the Lokpal shall constitute an Inquiry Wing headed by the Director of Inquiry for the purpose of conducting preliminary inquiry of any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988. Sub-clause (1) of clause 12 provides that the Lokpal shall constitute a Prosecution Wing headed by the Director of Prosecution for the purpose of prosecution of public servants in relation to any complaint by the Lokpal under this Bill. Sub-clause (1) of clause 28 empowers the Lokpal to utilise the services of any officer or investigating agency of the Central Government or any State Government for the purpose of conducting any inquiry.

5. Clause 13 of the Bill provides that the administrative expenses of the Lokpal, including the salaries, allowances and pensions payable to or in respect of the Chairperson, Members or Secretary or other officers or staff of the Lokpal, shall be charged upon the Consolidated Fund of India and any fees and other moneys taken by the Lokpal shall form part of that Fund.

6. At this stage, it is not possible to give precise details of the expenditure to be incurred on the Lokpal. It is, however, expected that the Bill, if enacted and brought into operation, would involve a non-recurring expenditure of one hundred crores of rupees and a recurring expenditure of two hundred crores of rupees in a financial year. In case it becomes necessary to construct a building to house the establishment of the Lokpal, additional expenditure of a non-recurring nature of another four hundred crores of rupees may also be involved.

7. Part III of the Bill provides for constitution of Lokayukta in every States. Clause 74 provides that the administrative expenses of the Lokayukta, including all salaries, allowances and pensions payable to or in respect of the Chairperson, Members or secretary or other officers or staff of the Lokayukta, shall be charged upon the Consolidated Fund of the State and any fees or other moneys taken by the Lokayukta shall form part of that Fund. The expenditure in this regard shall be borne by the respective State Governments. The expenditure in this regard may differ from state to state.

8. The Bill, if enacted, is not likely to involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 59 of the Bill empowers the Central Government to make rules for the purpose of carrying out the provisions of the proposed legislation. Sub-clause (1) of the said clause specifies the various matters in respect of which the rules may be made. These matters, *inter alia*, relate to the form of complaint referred to in clause (d) of sub-section (1) of section 2; the term of Search Committee, fee and allowances payable to the members of Search Committee and the manner of selection of panel of names; procedure of inquiry into misbehaviour for removal of the Chairperson or any Member; the posts in respect of which appointments shall be made after consultation with the Union Public Service Commission; matters for which the Lokpal shall have the powers of a Civil Court; the manner of sending an order of attachment to a Special Court; the manner of transmitting the letter of request under sub-section (2) of section 36; the manner of making reference to the Chief Justice of India; the form and the time for preparing the budget; the form for maintaining accounts and other relevant records and the form of annual statement of accounts; the form and manner and time for preparing the returns and statements under sub-section (1) of section 43; the form and the time for preparing the annual report; the form of annual return to be filed by a public servant under sub-section (5) of section 44; the minimum value for which the competent authority may condone or exempt a public servant from furnishing information in respect of assets under the proviso to section 45.

2. Clause 60 of the Bill empowers the Lokpal to make, by notification in the Official Gazette, regulations for carrying out the provisions of the proposed legislation. Such regulations should be consistent with the provisions of the proposed legislation and the rules made thereunder. The matters in respect of which the Lokpal may make regulations, *inter alia*, include the conditions of service of the secretary and other officers and staff of the Lokpal and the matters which in so far as relate to salaries, allowances, leave or pensions, the place of sittings of Benches of the Lokpal, the manner for displaying the status of all complaints pending or disposed of on the website of the Lokpal, and the manner and procedure of conducting an inquiry or investigation.

3. Clause 61 of the Bill provides that the rules made by the Central Government and regulations made by the Lokpal under the proposed legislation are required to be laid before each House of Parliament, as soon as they are made.

4. Clause 97 of the Bill provides for application of certain provisions relating to Lokpal to apply to Lokayukata in the States. The aforesaid provisions, *inter alia*, confers power upon the State Government to make rules for Lokayukata in respect of the matters similar to the Lokpal and also confers powers upon the Lokayukta to make regulations in respect of the matters similar to the Lokpal.

5. The regulations made by the Lokayukta requires the approval of Governor under the proposed legislation are required to be laid before the State Legislature, as soon as they are made.

6. The matters in respect of which rules or regulations may be made under the proposed legislation are matters of procedure or detail necessary for effective administration of the provisions of the proposed legislation and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

Bill No. 135 of 2011

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Sixty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (One Hundred and Sixteenth Amendment) Act, 2011.

Short title and
commencement

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. After Part XIVA of the Constitution, the following Part shall be inserted, namely:—

Insertion of
new Part
XIVB.

"PART XIVB**LOKPAL AND LOKAYUKTA**

323C. (1) There shall be a Lokpal for the Union.

Lokpal for
Union.

(2) The powers of superintendence and direction relating to holding a preliminary inquiry, causing an investigation to be made and prosecution of offences in respect of complaints made to the Lokpal under any law for the prevention of corruption made by Parliament shall vest in the Lokpal.

(3) The Lokpal shall be an autonomous and independent body with a Chairperson and such number of Members as Parliament may by law determine.

(4) Subject to the provisions of any law made by Parliament, the appointment of the Chairperson and Members of the Lokpal shall be made by the President.

(5) The conditions of service and tenure of the Chairperson and Members of the Lokpal shall be such as may be determined by Parliament by law.

(6) Every person appointed to be Chairperson or Member of the Lokpal shall, before he enters upon his office, make and subscribe before the President or some person appointed in that behalf by him an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(7) The Chairperson and Members of Lokpal shall not be eligible for further office either under the Government of India or the Government of any State or any other office as Parliament may by law determine.

Lokayukta
for State.

323D. (1) There shall be a Lokayukta for every State.

(2) The powers of superintendence and direction relating to holding a preliminary inquiry, causing an investigation to be made and prosecution of offences in respect of complaints made to the Lokayukta under any law for the prevention of corruption made by Parliament or the State Legislature, as the case may be, shall vest in the Lokayukta.

(3) The Lokayukta shall be an autonomous and independent body with a Chairperson and such number of Members as Parliament or, as the case may be, the State Legislature may by law determine.

(4) Subject to the provisions of any law made by Parliament or the State Legislature, the appointment of the Chairperson and Members of the Lokayukta shall be made by the Governor.

(5) The conditions of service and tenure of the Chairperson and Members of the Lokayukta shall be such as may be determined by Parliament by law or, as the case may be, the State Legislature.

(6) Every person appointed to be Chairperson or Member of the Lokayukta shall, before he enters upon his office, make and subscribe before the Governor or some person appointed in that behalf by him an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(7) The Chairperson and Members of Lokayukta shall not be eligible for further office either under the Government of India or the Government of any State or any other office as Parliament or the State Legislature may by law determine."

Amendment
of Third
Schedule.

3. In the Third Schedule to the Constitution, after Part VIII, the following Part shall be inserted, namely:—

"IX

Form of oath or affirmation to be made by the Chairperson or other Member of Lokpal or Lokayukta:—

I, A.B., having been appointed as the Chairperson (or a Member) of Lokpal or Lokayukta, do swear in the name of God that I will bear true faith and allegiance to the solemnly affirm

Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws."

STATEMENT OF OBJECTS AND REASONS

Government introduced a Bill, namely, 'Lokpal Bill 2011' in the Lok Sabha on 4th August 2011. This Bill was referred to the Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, law and Justice on the 8th August, 2011 for examination and report and this was followed by discussions in both the Houses of Parliament on 27th August, 2011. A sense of the House was communicated to the Standing Committee on the basis of discussions in the Houses. The Department Related Parliamentary Standing Committee after extensive discussion with all the concerned Stakeholders suggested major amendments as regards the scope and content of the Bill introduced in August 2011. It also recommended that Lokpal at the Centre and Lokayukta at the level of the States be conferred constitutional status in its 48th Report of 9th December 2011. Upon consideration of the recommendations of the Standing Committee, it is proposed to establish the institution of Lokpal at the Centre and Lokayuktas at the State level with constitutional status and, for this purposes to carry out necessary amendments to the Constitution by inserting a new Part, namely "PART XIV B titled "LOK PAL AND LOKAYUKTA".

2. The Constitution (One Hundred and Sixteenth Amendment) Bill, 2011. seeks to provide, *inter alia*, for:

(a) insertion of articles 323 C and 323 D in the proposed Part XIVB of the Constitution;

(b) setting up the institution of Lokpal for the Union with powers of superintendence and direction relating to holding a preliminary inquiry, causing investigation to be made and prosecution of offences in respect of complaints made to them under any law for the prevention of corruption made by the Parliament as an autonomous and independent body;

(c) appointment of Chairperson and such number of Members, their conditions of service and tenure, as Parliament may by law determine;

(d) similar dispensation for the institution of Lokayuktas at the level of the States.

3. The Bill seeks to achieve the aforesaid objectives.

NEW DELHI;
The 21st December, 2011.

V. NARAYANASAMY.

T. K. VISWANATHAN,
Secretary-General